Title 5

BUSINESS LICENSES AND REGULATIONS

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Chapter 5.04
DEFINITIONS

Sections:

5.04.010 Generally.
5.04.015 Repealed.
5.04.017 Repealed.
5.04.020 Repealed.
5.04.025 Repealed
5.04.030 Repealed.
5.04.035 Repealed.
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5.04.050 Repealed.
5.04.060 Repealed.
5.04.065 Repealed.
5.04.067 Repealed.
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5.04.130 Repealed.

5.04.135 Repealed
5.04.140 Repealed.
5.04.150 Repealed.
5.04.155 Repealed.
5.04.160 Repealed.
5.04.170 Repealed.
5.04.180 Repealed.
5.04.190 Repealed.
5.04.193 Repealed.
5.04.195 Repealed.
5.04.200 Repealed.

5.04.010 Generally. The following words and phrases, when used in this title, shall have the following meanings respectively ascribed to them. (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)).

Alcohol. "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

Alcoholic Beverage. "Alcoholic Beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

Beer. "Beer" means a malt beverage containing not more than 8.75% of alcohol by volume; or an alcoholic beverage containing not more than 14% alcohol by volume: that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients. The term does not include a caffeinated or stimulant-enhanced malt beverage.

Bonded Right-of-Way Contractor. "Bonded Right-of-Way Contractor" shall mean person(s), company(ies), corporation(s) performing construction or repair of right-of-way improvements (sidewalks, curb/gutter, paving) within/upon the public right-way. Bonded right-of-way contractor shall mean any person(s), company(ies), corporation(s) who has filed the proper bond, paid necessary fee(s), and has obtained a license as a bonded right-of-way contractor from City of Missoula Development Services.

Commented [SR1]: Moved from 12.08.010

Brewery or Micro-Brewery. Brewery or Micro-Brewery means an establishment for the manufacture of malt liquors, such as beer.

Business. "Business" means any and all industries, pursuits, occupations, avocations, professions and businesses that have annual gross receipts of six thousand ($6,000) dollars or more. Business carried on in a temporary manner by church, civic or fraternal organizations for fund raising are exempt. Business also means any and all rental of office and/or commercial space, wherein office or commercial space rentals occur regardless of the amount of rent derived from the rental. A person who is employed by another shall not be deemed a business. Itinerant vendors, transient vendors, transient merchants and rental of office or commercial space shall be considered a business for purposes of the ordinance codified in this chapter, irrespective of their amount of annual gross receipts

Cannabis. A term used in this code replacing the term "marijuana" used in state statutes and defined by the State of Montana (MCA §16-12-102). The term does not include hemp as defined in state law (MCA § 16-12-102).

Cannabis, Canopy. The total amount of square footage dedicated to live plant production at a registered premise consisting of the area of the floor, platform, or means of support or suspension of the plant.

Cannabis, Cultivation. The growing, harvesting, and curing of cannabis.

Cannabis, Dispensary. A retail facility where cannabis, and cannabis products are sold.

Cannabis, Manufacturing. The converting or compounding of cannabis into cannabis products, cannabis concentrates, or cannabis extracts.

Cannabis, Products. Products containing THC, derived from cannabis, for consumption. The term does not include hemp as defined in State law (MCA § 16-12-102).

Cannabis, recreational. A term used in this code replacing the term “adult-use” used in state statues and defined by the State of Montana (MCA §16-12-102). E.

Cannabis Cultivation Facility, Indoor. An enclosed area used to grow cannabis plants that is within a permanent structure using artificial light exclusively or to supplement natural sunlight as defined by the State of Montana (MCA §16-12-102). The term may include: (i) a greenhouse; (ii) a hoop house; or (iii) a similar structure that protects the plants from variable temperature, precipitation, and wind.

City. "City" means the city of Missoula, Missoula County, state of Montana.

Consumer. "Consumer" means one who uses, and by using destroys the value of the article purchased.

Contractor/Developer. “Contractor/Developer” means a person, firm, or corporation that:

> in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or in order to do work similar to that described in subsection i above upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided

Construction. "Construction" as used in this chapter shall mean install, installation, construct, construction, reconstruct, reconstruction, repair, remove and/or replace.

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Distillery/Micro-Distillery. Distillery or Micro-Distillery means a plant and works where alcoholic drinks are made by distillation that produces 25,000 gallons or less of liquor annually.

Employee. "Employee," for the purposes of this chapter, means any person other than an independent contractor employed by a business including active owners, managers, active partners and agents, also including salespersons and all persons engaged in or associated directly with the management and operation of the business concerned. The intention is to include as "employees" all persons hired by, or working for the business involved, and to include owners and proprietors within the designation. In case of part-time employees, the number of full-time equivalent employees (FTE) will be determined by dividing the total number of hours worked by all part-time employees by two thousand eighty.

Hotel, motel, roominghouse or lodginghouse. "Hotel," "motel," "roominghouse," or "lodginghouse" means any building or buildings containing guest rooms intended to be rented or hired out for sleeping purposes.

Itinerant vendor. "Itinerant vendor" means any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment and there soliciting, selling, or offering to sell, or exhibiting for sale, by sample, by catalogue, or otherwise, or taking orders for future delivery of any goods, wares or merchandise, or for services to be performed in the future.

Mayor. "Mayor" means the mayor of the city.

Nonprofit organization. "Nonprofit organization" means any religious, charitable, social, educational, or civic group which does not distribute profits or dividends to the members thereof and where profit is not their object.

Number of employees. "Number of employees" means the number of employees on the payroll of the business as of May 31st of the year immediately preceding the license year; or, in the case of a new business, the number of employees that it expects to have on the payroll sixty days after the business commences operation.

Offices or Buildings. “Offices or Buildings” shall mean all buildings, structures, rooms, offices, or portions thereof which are situated on a permanent structural foundations and/or permanently connected to City sewer service wherein a business or organization is located and which may be accessible to the public, employees, or members or located in such close proximity to other buildings, structures, rooms, offices, or portions thereof so as to constitute a public threat in the event of a uniform safety code violation.

Paving Construction Work. "Paving Construction Work" shall mean construction and/or repair of parking facilities, driveway approach/apron, roadway/street, alley/alley approach, and refers to any asphaltic or cementitious concreting work, or approved alternative surface, whether upon and/or within public right-of-way or public access easement, that is required to be performed as a result of the building permit process, zoning compliance permit process, a City construction/repair project or to comply with any other federal, state or local law or code.

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Person. "Person" includes individuals, partnerships, joint ventures, trustees, trusts, or corporations; or officers, agents, employees, factors, or any kind of personal representative acting on behalf of a business in any capacity.

Produces. "Produces" means the distillation of liquor on the premises of the distillery licensee.

Public Access Easement. "Public Access Easement" shall mean an easement to/for public benefit and use. Public access easements may contain roadways/streets, curb/gutter, sidewalks, trails and other related features (these may also be designated as, but not limited to public sidewalk easement, public right-of-way easement, public roadway/street easement). Public access easements shall be subject to the same specifications, fees, inspections and requirements as public right-of-way.

Commented [SR4]: Moved from 12.08.010

Right-of-Way Improvements. "Right-of-Way Improvements" shall mean all construction work upon/within a public right-of-way and/or public access easement. Construction work may include, but is not limited to: all materials, equipment and labor to install or repair curb/gutter, sidewalk, roadway/street, alley/alley approach paving, grading, bridges (vehicular and/or pedestrian), driveway approaches/aprons, alley approaches, curb ramp repairs and/or replacements and other appurtenances related to their construction and/or maintenance, which are located upon/within the limits of said right-of-way improvements work. Right-of-way improvements shall include paving construction work as defined herein.

Commented [SR5]: Moved from 12.08.010

Temporary premises. "Temporary premises" means any hotel, rooming house, storeroom, building, or any part of any building whatsoever, tent, vacant lot, freight station, railroad car, motor truck, trailer or other vehicle or any public or quasi-public place temporarily occupied for business.

Transient Vendor. "Transient Vendor" is any person engaged or employed in the business of selling to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment and soliciting, selling or taking orders for future delivery of any goods, wares or merchandise. The term also includes any person that brings onto temporary premises within the city a stock of goods, wares, or merchandise, notions or other articles of trade, other than farm, orchard, vineyard or garden products, and who or which solicits, sells or offers to sell or exhibits for sale such stock of goods, wares or merchandise, notions or other articles of trade at retail. This definition applies to persons vending food or other merchandise from pushcarts, vehicles, trailers, or other readily mobile sources to customers within the City limits. This all-inclusive definition applies to vendors coming into the City of Missoula to provide any type of service (e.g. painters, contractors, tree trimmers, computer technicians, etc.), to residents within the City limits. Nothing contained in this subsection shall apply to duly constituted city markets when and if operated by authority of the city.

Transient Merchant. "Transient Merchant" means any person that brings into temporary premises into the city any goods, ware, merchandise, notions or other articles of trade, other than farm, orchard, vineyard or garden products and who or which solicits, sells or offers to sell or exhibits for sale such stock of goods, wares, merchandise, notions or other articles of trade at wholesale A transient merchant can operate out of temporary premises for a period of ninety (90) calendar days in any 12 month period.

Wine. "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

Winery. "Winery" means an establishment at which wine is produced.

Year. "Year," for general city business license purposes, means a period of time of twelve months commencing each year on June 1 and ending the last day of May of the next year. For contractors, "year" means a period of time of twelve months commencing each year on March 1st and ending on the last day of February of the next year, and for Rental Business Licenses, means a period of time of twelve months commencing each April 1st

and ending on the last day of March.

5.04.015 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.017 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.020 Repealed. (Ord. 3461 §1, 2011; Ord. 3161; Ord. 3100, 1999; Ord. 1916 (part), 1978: prior code §18‑1(part)).

5.04.025 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.030 Repealed. (Ord. 3461 §1, 2011; Ord. 3161, 2000; Ord. 3100, 1999; Ord. 1916 (part), 1978: prior code §18‑1(part)).

5.04.035 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.040 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 3161, 2000; Ord. 3100, 1999; Ord. 2927 §1, 1995: Ord. 1916 (part), 1978: prior code §18‑1 (part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.050 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.060 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.065 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.067 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.070 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.080 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.090 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.100 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.110 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.120 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.130 Repealed (Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)).

5.04.135 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.140 Repealed (Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)).

5.04.150 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.155 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.160 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.170 Repealed (Ord. 3461 §1, 2011; Ord. 1916 (part), 1978: prior code §18‑1(part)).

5.04.180 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 3342 §1, 2007; Ord. 1980 (part), 1978; prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.190 Repealed (Ord. 3701, 2022; Ord. 3524, 2014; Ord. 3500, 2013; Ord. 3461 §1, 2011; Ord. 3342 §2, 2007; Ord. 1980 (part), 1978; prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.193 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.195 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011) **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

5.04.200 Repealed (Ord. 3701, 2022; Ord. 3461 §1, 2011; Ord. 2671 §1, 1989: Ord. 1916 (part), 1978: prior code §18‑1(part)). **(Codifier's note:** In 2022, this section was recodified in Section 5.04.010)

Chapter 5.08

LICENSING PROVISIONS GENERALLY

Chapters:

5.08.010 License‑‑Required.
5.08.020 License‑‑Application‑‑Issuance procedure.
5.08.030 License‑‑Fees‑‑Schedule.
5.08.040 License‑‑Fees‑‑Refund.
5.08.050 Repealed.
5.08.060 License‑‑Separate required for branch establishment.
5.08.070 License‑‑Posting required.
5.08.080 License‑‑Contents.
5.08.090 Business‑‑Change of location.
5.08.100 Repealed.
5.08.110 Interpretation of provisions‑‑Unlawful business.
5.08.120 Right to refuse or revoke license.
5.08.130 Background investigation requirements‑‑Fee.
5.08.140 Surety bonds required.
5.08.150 Liability insurance requirements.
5.08.160 Violation‑‑Penalty.

5.08.010 License‑‑Required. For the protection and general welfare of the inhabitants of the city, every business conducted within the city comes within the police power of the city, and no person shall engage in business without first obtaining a license unless it is a nonprofit organization or a business or professional exempted by state law. The charge for such a license shall be as fixed in Section 5.08.030 unless otherwise provided in this code. Money received from licenses shall be used to defray the expense of issuing the licenses and the inspection, regulation and control of business within the city. This licensing requirement is intended to apply to all business entities conducting business by sale of their service or product at fairs, including carnivals at the county fair, display shows, and festivals conducted within the city unless the entity is otherwise expressly excluded in this chapter from this requirement. Any business licensed at another business location within the city is not required to obtain an additional business license for conducting their business at a fair, display show or festival. A city business license is not required for bazaars, farmers markets, or arts and crafts sales conducted and sponsored solely by a nonprofit entity that has been established as a nonprofit entity as that term is defined in Chapter 5.04, except that carnivals at the Missoula County Fairgrounds or elsewhere within the city are not to be exempt from city business licensing and carnivals at the Missoula County Fairgrounds or elsewhere within the city shall acquire a city business license.

Sidewalk cafés with dining as well as consumption of alcohol on a public sidewalk in conjunction with sidewalk café dining are subject to the provisions of Chapter 12.18 Missoula Municipal Code. (Ord. 3701, 2022; Ord. 3543, 2015; Ord. 2612 S1, 1988: Ord. 2387 §1, 1984: Ord. 1916 (part), 1978: prior code §18‑2).

5.08.020 License-Application-Issuance procedure.

A. The City shall be charged with the collection of all business license fees as adopted by City Council. The City shall provide application forms and licenses in connection with the issuance of licenses. The City application form must contain the following information:
    1. General Business License.
        a. Name, permanent address, business, home, and emergency phone numbers of the applicant
        b. Full business name
        c. Building Address
        d. Previous use of space to be occupied
        e. Amount of square footage in the building or suite to be used for the business
        f. Number of employees including owners and managers, full-time and part-time employees

g. A brief description of the nature of the business
h. If an agent or representative, the name and address and phone number of the principal
i. The endorsement of the city zoning officer showing the business location sought to be licensed does not violate any city zoning provision
j. Other information city laws and procedures require.

2. Office Space, Retail; Wholesale or Warehouse Space.
   a. Name or rental agency, manager, or owner
   b. Name of building, if applicable
   c. The address of the building
   d. The business, home, and emergency phone number of the applicant
   e. Amount of square footage in the building
   f. The endorsement of the city zoning officer showing the business location sought to the licensed does not violate any city zoning provision
   g. Other information city laws and procedures require

3. Cannabis Business License
   a. Name, permanent address, business, home, and emergency phone numbers of the applicant
   b. Name or rental agency, manager, or owner
   c. Full business name
   d. Address of building
   e. Previous use of space to be occupied
   f. Number of employees including owners and managers, full and part-time employees
   g. Amount of square footage in the building or suite to be used for the business
   h. A brief description of the nature of the business, including intent to manufacture cannabis products, cultivate, dispense, transport, test, or a combination of the above
   i. If cannabis cultivation, canopy area size
   j. The endorsement of the City Zoning officer showing the business location sought to be licensed does not violate any city zoning provision
   k. Other information city laws and procedures require including compliance with Chapter 5.120 of this Title.

B. The City shall issue a license upon presentation of a properly completed application together with the appropriate license fee, unless upon review or inspection when inspection occurs by the local health officer, sanitary inspector, fire inspector, zoning officer, building inspector, or police officer indicates a violation of any city ordinance or code existing at the place of business sought to be licensed; in which case such inspector or officer shall submit a written description of the violation, specifying the steps necessary to qualify the premises for a license, a copy of which shall be furnished to the applicant. Inspections of existing single family residential dwelling units shall be performed on a complaint driven basis or at a time of new or remodeled construction nor change of type of land use.

(Ord. 3701, 2022; Ord. 3434 §1, 2010; Ord. 3383 §1, 2008; Ord. 3351, 2007; Ord. 3322 § 1, 2006; Ord. 3299 § 1, 2005; Ord. 3258, 2004, § 1; Ord. 3229, 2003; Ord. 3161, 2000; Ord. 3100, 1999; Ord 1916 (part), 1978; prior code § 18-4).

5.08.030 License-Fees-Schedule.

The City Council shall establish and amend fees relating to business licensing by resolution after conducting a public hearing for the following types of businesses:

A. General Category, Cannabis, Contractor and Liquor Sales Businesses--The fee schedule for a new business, a business license renewal or any business that is changing locations is based on the number of full time equivalent (FTE) employees subject to a minimum and maximum fee for each business type.

B. Businesses that rent office, retail, wholesale and warehouse space--New retail or wholesale rental business or a previously licensed retail or wholesale business that is changing locations is based on the square footage being rented subject to a minimum and maximum fee for each range of square footage.

C. Market Events such as Saturday Market, Hellgate Rendezvous, Southgate Mall Arts and Crafts Fair(s) or similarly organized markets--The event organizer (market master), oversight agency or management group shall acquire these licenses for such vendors for the organized event(s).

Any vendor desiring to market their products(s) outside of the confines of the above specified markets will be required to purchase the standard transient merchant license outlined in 5.08.030 (D) MMC. The event organizer will be required to keep a log containing the names and addresses of the daily participants for each

market session. This special blanket license of certain small market events is not intended to include the special auto, boat, or RV show events nor is it intended to include any special sales involving these products.

D. Transient vendor licenses
   1. Short term license which expires 7 days after issuance
   2. Long term license which expires May 31st of the license year and is eligible for renewal upon its expiration.

E. Transient merchant licenses
   1. 90 day license

Licenses are not transferable.

(Ord. 3701, 2022; Ord. 3524, 2014, Ord. 3500, 2013; Ord. 3477, 2012; Ord. 3461, 2011; Ord. 3434 §2, 2010; Ord. 3383 §2, 2008; Ord. 3351, 2007; Ord. 3322 §2, 2006; Ord. 3299 §2, 2005; Ord. 3258, §2, 2004; Ord. 3229, 2003; Ord. 3161, 2000; Ord. 3100, 1999; Ord 3099; Ord. 2927 §2, 1995: Ord. 1916 (part), 1978: prior code § 18-3).

5.08.040 License - - Fees - - Refund. If an application for a license is denied, the fee that accompanied the application shall be returned to the applicant. (Ord. 1916 (part), 1978: prior code §18 - 13).

5.08.050 Repealed (Ord. 3477, 2012; Ord. 3375, 2008; Ord. 3189, 2001; Ord. 2672 §1, 1989: Ord. 1916 (part), 1978: prior code §18 - 5).

5.08.060 License - - Separate required for branch establishment. A license shall be obtained for each branch establishment or location of a business, as if such branch establishment or location were a separate business; provided, however, that warehouses and distribution plants used in connection with and incidental to a licensed business where no sales are made shall not be deemed to be a branch establishment. The provisions of this section requiring separate business licenses for separate branch locations are also applicable to any temporary sale conducted by a licensed business at any location other than the location for which a business is licensed.

Any business license issued for a temporary sale for a temporary location shall be valid only at the location identified on the license and shall be valid only for the remainder of the business licensure year during which the license was issued. (Ord. 2365 §3, 1983: Ord. 1916 (part), 1978: prior code §18 - 6).

5.08.070 License - - Posting required. Every license issued under the provisions of this chapter shall be posted in a conspicuous place on the premises where the business is conducted. All licenses issued for a business without a fixed place of business shall be carried by the licensee while the licensee is doing business and shall be shown to any person with whom the licensee is doing business or any police officer on demand. (Ord. 1916 (part), 1978: prior code §18 - 7).

5.08.080 License—Contents. Each license issued under the provisions of this chapter shall state upon its face the following:

A. General Business License
   1. Name of the licensee and any other name under which the business is to be carried on
   2. Number of employees as defined in Chapter 5.04
   3. The address of the business
   4. The amount of the license fee
   5. The date of issuance and the date of expiration

B. Office Space, Retail, Whole or Warehouse Space License
   1. Name of the licensee and any other name under which the business is to be carried on
   2. Address of building
   3. The amount of the license fee
   4. The date of issuance and the date of expiration

5. Amount of square footage in building

C. Cannabis Business License

1. Name of the licensee and any other name under which the business is to be carried on
2. Number of employees as defined in Chapter 5.04
3. The address of the business
4. The amount of the license fee
5. The date of issuance and the date of expiration

(Ord. 3701, 2022; Ord. 3434 §3, 2010; Ord. 3384 §3, 2008; Ord. 3351, 2007; Ord. 3322 §3, 2006; Ord. 3299 §3; Ord. 3258 §3, 2004; Ord. 3229, 2003; Ord. 1916 (part), 1978: prior code §18-8).

5.08.090 Business--Change of location. A licensee shall have the right to change the location of the licensed business, provided the new location complies with the requirements of the ordinances of the city. (Ord. 1916 (part), 1978: prior code §18-9).

5.08.100 Repealed. (Ord. 3461, 2011; Ord. 1916 (part), 1978: prior code §18-10).

5.08.110 Interpretation of provisions--Unlawful business. The licensing provisions of this chapter shall not be construed to grant permission to carry on or conduct any unlawful business, or to conduct any business in an unlawful manner, or to grant immunity to any business from lawful regulation and control, or to authorize the violation of any zoning ordinance, regulation, or restriction. (Ord. 1916 (part), 1978: prior code §18-11).

5.08.120 Right to refuse or revoke license. Whenever the council deems it in the public interest, it may, by resolution adopted by two-thirds' vote of all the members of the council and approved by the mayor, refuse to authorize the issuance of any license provided for in this chapter, the council may, upon a two-thirds' vote of all members of the council and approved by the mayor, revoke any license issued under this chapter when it is deemed in the public interest to do so. (Ord. 1916 (part), 1978: prior code §18-12).

5.08.121 Prohibition on Issuance of New Business Licenses to Adult-Use Recreational Cannabis Dispensary Operators.

A. The City Council deems that it is in the public interest to not issue a business license for a new adult-use recreational cannabis dispensary within the City limits pending review of applicable rules. The prohibition extends to preventing new locations for existing dispensary operations, as well as preventing relocation of existing dispensaries.

B. Any cannabis dispensary operating without a valid license shall be considered to be in violation of this Chapter and subject to the enforcement provisions of Section 5.08.160, MMC. Each day of operation without a license shall constitute a separate violation of this Section.

C. The City may renew business licenses for any cannabis operation that was in operation at the time this Section became effective, so long as the business is in compliance with all other applicable rules and regulations.

D. This Section will sunset and have no further force and effect two years after the effective date of the ordinance enacting this Section.

(Ord. 3748; 2024)

5.08.130 Background Investigation requirements—Fee.

The City Council shall establish and amend fees relating to background investigations by resolution after conducting a public hearing.

A. The City has determined that it is in the public interest to require employees of certain businesses to undergo a criminal background check as part of the business licensing procedure. The following types of businesses require background checks for each full- and part-time employees involved with the business: video inventorying services operating within buildings; any for-profit business conducting sales or solicitation at individual residences; tree trimming and spraying; itinerant vendors; transient merchants; boiler-room operations; chimney sweepers; home maintenance and repair businesses, except those that are licensed, bonded and insured pursuant to Montana state licensing laws or as an individual had a valid business license

during the previous license year; and locksmith businesses. Employees of the types of businesses in the previous list are required within ten days of employment to have reasonable background investigation, including criminal record check, made by the city police department in order to be approved to be employed by the licensed business, property the home is on, or the fixtures comprising the home or which are within the home. A "fixture" means that which is fixed or attached to the home so as to become so related to the particular real estate that an interest in them arises under real estate law.

B. The employer shall be responsible to see that each employee has made application for a security check within ten business days of employment.

C. Nothing in this section shall be construed to require any background check on any member of a bona fide law enforcement agency.

D. If an applicant's background investigation reveals any conviction(s) for: a felony offense listed in Chapter 5 (Offenses Against the Person), Title 45, Montana Code Annotated; an offense related to felony level violent or predatory conduct; sexual offenses; or an offense related to the fraud, dishonesty, or deceptive practices, issuance of the business license shall be referred to the Business License Appeal Committee to determine whether issuance of a business license or approval of an employee to work for a licensed business is in the public interest.

E. It shall be the policy of the City to issue business licenses to individuals with a prior criminal history unless there is a particularized risk to public health, safety, or welfare. In determining whether a prior criminal conviction shall be grounds for denial of an application, the Business License Appeal Committee shall consider:
   1. whether the conviction, or the facts underlying the conviction, shows there may be a particularized threat to the public based on the type of work the applicant will be doing;
   2. whether the applicant has been fully discharged from custody and supervision for conviction of the offense;
   3. the age of the applicant at the time of the conviction and the length of time between the conviction and the application;
   4. any facts showing rehabilitation of the applicant; and
   5. any other relevant factors related to the conviction calling into question the honesty of the applicant or calling into question the safety of the public if the application were approved. The applicant shall be given the opportunity to provide relevant information concerning the above criteria to the Business License Appeal Committee.

F. If an applicant desires to file an appeal of a denied business application for a reason other than outlined in Section E. above, or if they have been referred to the Business License Appeal Committee due to a conviction described in Section D. above, the matter shall be taken before the city administrative panel consisting of:
   1. the mayor or the mayor's designee;
   2. the Council President or a Council person designated by the Council President; and
   3. the city clerk. This panel shall be known as the Business License Appeal Committee. This Committee shall conduct a due process hearing review of the application for determination whether it is in the public interest to issue the license or approve an employee of a licensed business.

(Ord. 3731, 2024; Ord. 3524, 2014, Ord. 3434 §4, 2010; Ord. 3383 §4, 2008; Ord. 3351 §4, 2007; Ord. 3322 § 4, 2006; Ord. 3299 § 4, 2005; Ord. 3258 § 4, 2004; Ord. 3229, 2003; Ord. 2936§1, 1995: Ord. 2885, §1, 1994: Ord. 2419 §1, 1985; Ord. 2387 §2, 1984: Ord. 2365 §§1 and 2, 1983; Ord. 1979, 1978: Ord. 1916 (part), 1978: prior code §§18-14, 21-19.1).

5.08.140 Surety bonds required. Prior to receiving a city business license, each person engaged in any business where specifically required below or in other chapters of this code, shall be required to file with the city a surety bond in the sum specified, subject to the conditions specifically required below or in the applicable ordinance. Such bond shall indemnify and save harmless the city from all loss or damage or impairment of use of city property or city right-of-way, and from all loss caused by the violation by the bond holder or his agents, or employees of any ordinance, rule, regulation, condition or requirement of the city. (Ord. 3229, 2003; Ord. 2885 §2, 1994: Ord. 1972, 1978: Ord. 1916 (part), 1978: prior code §18-14.1).

A. Bonded Right-of-Way Contractor. It is unlawful for any person to engage in the business of construction and/or repair of any right-of-way improvements in any combination thereof upon any public right-of-way and/or public access easement within the City of Missoula unless the person is the holder of a valid, unsuspended license as a bonded right-of-way contractor. (Ord. 3552, 2015; Ord. 3244, 2004; Ord. 2043 §23, 1979; prior code §28-95).
   1. At the time of making application for a City business license as a bonded right-of-way contractor, the applicant shall file with City of Missoula Development Services evidence of liability insurance as required by Section 5.08.150 and a surety bond in the amount of ten thousand dollars ($10,000.00).
   2. The bond provided for in this section shall run to the City of Missoula and shall be signed by a bonding company authorized to transact business in the State of Montana. The bond shall be conditioned, so as to save harmless the City of Missoula and all persons for whom right-of-way improvements shall be constructed and/or repaired, by the bonded right-of-way contractor, for a period of two (2) years from the date of final inspection and acceptance by the City Engineer. This bond shall be in effect for problems

Commented [SR6]: Moved from 12.08.020

Commented [SR7]: Moved from 12.08.030

Commented [SR8]: Moved from 12.08.030

resulting from defective/faulty materials and/or workmanship. (Ord. 3552, 2015; Ord. 3244, 2004;Ord. 2043 §24, 1979: Ord. 1895, 1978; prior code §20-96).

B. Bonded Right-of-Way Contractor -- Liability Upon Bond, Time Limit. Actions may be maintained upon the bond by either the City or by any person who shall suffer any loss or damage by reason or on account of any right-of-way improvements constructed or repaired by a bonded right-of-way contractor, becoming unsafe or defective within two (2) years from the date of the construction and/or repair of right-of-way Improvements on account of materials used therein or workmanship thereon. (Ord. 3552, 2015; Ord. 3244, 2004; Ord. 2043 §27, 1979; prior code §20-100).

Commented [SR9]: Moved from 12.08.060

C. Bonded Excavation Contractor.

Commented [SR10]: Moved from 12.24.120

1. An applicant for a permit must also file a surety bond as required in this section in the principal amount of not less than the contract amount, but in no case, less than twenty thousand dollars. In addition to the requirements of this section, the bond shall also be conditioned upon the proper backfill of the excavation, proper installation of any utility service or main line and restoration of surface in accordance with the provision of this chapter. Such bond shall be required of all applicants for permits without exception.

2. Any evidence of settlement of backfill or deterioration or failure of excavator's patch applied to the surface in the public right-of-way within two years after completion and acceptance of the work shall be deemed conclusive evidence of defective backfill or surface restoration by the permittee, excavator and in such event, after three days' notice to the excavator and their bondsman, the Public Works and Mobility Director or a designated agent may elect to re-excavate and backfill properly or to repair defective surface restorations, or both, in accordance with the provisions of this chapter, and the costs thereof shall be assessed against the bond provided for by this section and bond filed under this section must so recite the right of the city to do so. (Ord. 3709, 2023; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §14, 1979; prior code §28-44).

D. Bonded Non-Municipal Utility.

1. Non-municipal utilities shall file a surety bond in the principal sum of fifty thousand dollars concerning all of the excavation or above groundwork made by or on behalf of the company. Such bond shall be filed with the City Treasurer prior to issuance of excavation business licenses.

Commented [SR11]: Moved from 12.24.150

E. Gas Fitting and Piping Contractor

Commented [SR12]: Moved from 13.24.030

1. -The applicant shall file and thereafter keep on file in the office of the city clerk, and in full force and effect at all times, a surety bond executed by a surety company duly authorized to transact business in the state and running to the city in the sum of three thousand dollars, conditioned to the effect that the person shall perform all work in connection with the installation, maintenance and repair of gas piping, equipment and appliance in a skillful and workmanlike manner, using only suit-able and proper materials, equipment and appliances and shall comply with all of the provisions of the ordinances of the city relating thereto. (Prior code §14- 3).

A. Minimum liability insurance requirements for contractors doing business in or for the city shall be as follows:
   1. Minimum limits of liability required shall be as follows:
      a. Bodily injury to one or more persons, three hundred thousand dollars;
      b. Property damage liability, one hundred thousand dollars; or
      c. Single limit bodily injury and property damage, three hundred thousand dollars.
   2. All vehicle liability must be included, including auto nonownership and hired cars.
   3. The insurance coverages for contractors shall be as follows:

a. Excavators, drainlayers and others doing any excavating work:
    i. Comprehensive form,
    ii. Premises and operations,
    iii. Underground,
    iv. Products and completed operations;
b. Housemovers and demolition contractors:
    i. Comprehensive form,
    ii. Premises and operations;
c. All other contractors:
    i. Comprehensive form,
    ii. Premises and operations,
    iii. Products and completed operations.

B. Before license is issued, a certificate of insurance shall be provided the city which shall show complete compliance with all provisions of subsection A.

C. The city shall give ten days' notice by registered mail of any cancellation or alteration of the above insurance requirements.

D. Evidence of compliance with Montana Division of Worker's Compensation regulations concerning accident or occupational disease incurred by the contractors' employees during the course of their employment.

E. For purpose of this section, "contractor" means any person or firm engaged in any of the following businesses: Construction or demolition of residential or commercial buildings, construction of streets, curbs and sidewalks, moving houses or other buildings, excavating, sewer and drain laying, excavators, gas fitters, electrical contractors and plumbing contractors. (Ord. 2219 §1, 1981: Ord. 1941, 1978: Ord. 1916 (part), 1978: prior code §18‑14.2).

5.08.160 Violation‑‑Penalty.

A. Every person carrying on or engaging in the transaction of any business for which a license is required without first procuring the proper license therefor, and any persons providing misinformation upon application for a license shall be guilty of an ordinance violation, and upon conviction shall be punished by a fine up to but not in excess of five hundred dollars. There shall be no penalty of imprisonment imposed as part of a sentence for this ordinance violation. Every day business is conducted without a license shall constitute a separate offense.

B. In addition to the above penalty, a civil penalty in the amounts hereinbelow set forth shall be imposed on every person who fails to obtain their business license within the time period required. A civil judgment for the amount of the license fee due and unpaid, plus penalty, may be sought and entered against the defendant in cases of nonpayment.
    1. The following penalties shall be imposed for late payments of annual business license fees which are due on March 1st of each year:
        a. Twenty‑five percent if not paid by April 1st;
        b. Fifty percent if not paid by May 1st; and
        c. One hundred percent if not paid by June 1st.
    2. Whenever a new business commences operation after March 1st of any business licensure year and the business fails to pay its business license fee within one month after the business operation has commenced, a penalty of twenty‑five percent shall be imposed; if not paid within two months after the business operation has commenced, a penalty of fifty percent shall be imposed; if not paid within three months after the business operation has commenced, a penalty of one hundred percent shall be imposed.

C. Whenever a new business commences operation after September 1st of any business licensure year, the escalating penalty imposed shall be on the proration license fee authorized pursuant to Section 5.08.050 of this code, and the penalty shall escalate pursuant to thirty‑day intervals in a manner similar to that set forth above for the percentage of penalty fee increase.

(Ord. 2672 52, 1989: Ord. 2421 51, 1985: Ord. 2028, 1979: Ord. 1916 (part), 1978: prior code §18‑14.3).

5.08.170 Contractor – License Suspension.

A. Contractor – License Suspension Grounds. The City Engineer may suspend the business license of any contractor who shall perform any work within/upon the public right-of-way in manner or form other than that permitted by the City Engineer, or who shall deviate from City Public Works and Mobility Standard Drawings and/or Missoula Public Works Standards and Specifications available at the City of Missoula Engineering, or who shall perform any work without first obtaining from the City Engineer the proper reviewed and approved construction plans, or who shall fail, neglect or refuse to comply with any of the other provisions in this chapter. It shall be unlawful for any contractor to engage in the business of performing any work within/upon the public right-of-way while such license shall remain suspended. (Ord. 3552, 2015; Ord. 3492, 2013; Ord. 3244, 2004;Ord. 2043 §25, 1979; prior code §20-97) .

B. Contractor – License Suspension Report to City Council. Upon the license of any contractor being suspended by the City Engineer, the City Engineer shall report the suspension in writing to the City Council at its next regular meeting, together with the reasons for suspension. The City Council may either revoke the license, withdraw the suspension or affirm the license suspension for a certain period of time. If the license is revoked or suspended by the City Council, it shall thereafter be unlawful for the contractor to engage in the business of performing any work within/upon the public right-of-way. (Ord. 3552, 2015; Ord. 3492, 2013; Ord. 3244, 2004; Ord. 2043 §26, 1979; prior code §20-98)

Title 5.12

POOLHALLS AND BILLIARD PARLORS

Sections:

5.12.010 Hours of business.
5.12.020 Pea pool or gambling - Permitting unlawful.

5.12.030 Pea pool or gambling - - Playing unlawful.
5.12.040 Revocation of license.

5.12.010 Hours of business. It is unlawful for any person running or conducting any pool or billiard hall, room or parlor, or any employee of any such person, to keep or permit the same to be kept open to the public, or to permit any person to enter or visit the same, or to be in, remain in or loiter therein between the hours of one a.m. and seven a.m. (Prior code §26 - 1).

5.12.020 Pea pool or gambling - - Permitting unlawful. It is unlawful for any person running or conducting a pool hall, room or parlor, or a billiard hall, room or parlor or any employee of such person who is working or employed in or about the pool or billiard hall, room, or parlor to permit that certain game of pool commonly called "pea pool" or any similar game to be played therein; or to permit any wager or bet to be made upon any game of pool or billiards played or to be played in the hall, room or parlor, or upon any play made or to be made in any game played or to be played therein. (Prior code §26 - 2).

5.12..030 Pea pool or gambling - - Playing unlawful. It is unlawful for any person to play the game of pea pool or any similar game, or to make any bet or wager upon any game of pool or billiards or upon any play made or to be made in any pool or billiard game. (Prior code §26 - 3).

5.12.040 Revocation of license. A second conviction of any violation of this chapter of any person conducting any pool or billiard room, hall or parlor, or person employed therein, shall, in addition to the penalty provided for in this code, operate as a revocation of the license under which the business is conducted. (Prior code §26 - 4).

Chapter 5.16

HOTELS AND LODGINGHOUSES

Sections:

5.16.010 Lodginghouse, rooming house or apartment defined.
5.16.020 License - - Required.
5.16.030 License - - Health certificate.
5.16.040 License - - Issuance requirements.
5.16.050 Repealed.
5.16.060 Repealed.
5.16.070 Rooms - - Ventilation.
5.16.080 Rooms - - Construction.
5.16.090 Rooms - - Separate air shaft.
5.16.100 Overcrowding prohibited.
5.16.110 Toilet facilities.
5.16.120 Repairs - - Generally.
5.16.130 Repairs - - Toilet and sink floors and surfaces.
5.16.140 Conveniences and receptacles - - Water service - Watertight cellar requirement.
5.16.150 Hall ventilation and lighting requirements.
5.16.160 Garbage receptacles - - Storage of combustibles and animal keeping prohibited.
5.16.170 Cleanliness - - Contagious disease disinfection requirement.
5.16.180 Cleanliness - - Filth or human wastes prohibited..
5.16.190 Cleanliness - - Disinfection upon health officer request.
5.16.200 Applicability of chapter.

5.16.010 Lodginghouse, rooming house or apartment defined. A "lodginghouse, rooming house or apartment" shall be taken to mean and include any house or portion thereof in which persons are harbored or received or lodged for hire, for a single night, or for less than a week at one time, or any part of which is let for any person to sleep in for any term less than a week. (Prior code §16 - 1).

5.16.020 License - - Required. No person shall conduct a lodginghouse or sleeping apartment or apartments in the city without first obtaining a license so to do. (Prior code §16 - 2).

5.16.030 License - - Health certificate. No licenses shall be granted to conduct a lodginghouse, rooming house or sleeping apartments in the basement of any building, unless a proper certificate is first granted by the board of health or health officer of the city, certifying that the sanitary conditions of such basements are satisfactory to the board of health or health officer. (Prior code §16 - 3).

5.16.040 License - - Issuance requirements. No license as prescribed in Section 5.16.020 shall be granted for any lodginghouse, rooming house or apartment until the chief of the fire department, the inspector of buildings and the health officer of the city shall certify:

A. That the building, lodginghouse, rooming house or sleeping apartment is provided with sufficient number of toilets and with good and sufficient means of ventilation;

B. That the building is provided with sufficient means of escape in case of fire and is constructed in accordance with the ordinances of the city and state law;

C. That the means for lighting are satisfactory;

D. That not less than four hundred cubic feet of air space is allowed to each lodger or occupant in a sleeping room;

E. That there are not less than two horizontal feet between the sides of any two beds;

F. That all beds are so arranged that under each of them the air will freely circulate;

G. That there is no decayed vegetable matter in close proximity to such sleeping apartment, and that the sanitary condition of such sleeping apartment is good. (Prior code §16 - 4) .

5.16.050 Repealed - (Prior code §16 - 5; Ord.3562, 2016).

5.16.060 Repealed - (Prior code §16 - 6; Ord.3562, 2016).

5.16.070 Rooms - - Ventilation.

A. Every house, building, apartment or portion thereof in the city designed to be used, occupied, leased or rented, or which is or shall be used, occupied, leased or rented for lodging or rooming house, shall have in every room thereof which is occupied as a sleeping room, and which does not communicate directly with the external air, a ventilating or transom window having an opening or area of three square feet over the door leading into and connecting with the adjoining room if such adjoining room communicates with the external air; and also a ventilating transom window of the same opening or area communicating with the entry or hall of the house. Where this is, from the relative situation of the rooms, impracticable, such last mentioned ventilating or transom window shall communicate with an adjoining room that itself communicates with the entry or hall.

B. Every such house or building shall have in the roof at the top of the hall an adequate and proper ventilator. No room in any lodginghouse shall be so occupied that the allowance of air to each person living or sleeping in the room shall at any time be less than four hundred cubic feet for each person more than twelve years old, and two hundred cubic feet for each person of the age of twelve years or under. (Prior code §16 - 7).

5.16.080 Rooms - - Construction.

A. In every house designated in Section 5.16.070 hereafter erected or converted, every habitable room, except rooms in the attic, shall be in every part not less than eight feet in height from the floor to the ceiling; and every habitable room in the attic of any such building shall be at least eight feet in height from the floor to the ceiling throughout not less than one - half of the area of such room.

B. Each room shall have at least one window connecting with the external air, and over the door an adequate ventilator connecting it with a room or hall which has a connection with the external air, and so arranged as to produce a cross current of air. The total area of window or windows in every room communicating with the external air shall be at least one - tenth of the superficial area of every such room, and the top of one at least of such windows shall not be less than seven feet six inches above the floor, and the upper half at least shall be made so as to open the full width.

(Prior code §16-8).

5.16.090 Rooms--Separate air shaft. Every habitable room of a less area than one hundred superficial feet, if it does not communicate directly with the external air, and is without an open fireplace, shall be provided with special means of ventilation by a separate air shaft extending to the roof, or otherwise, as the health officer may prescribe.

(Prior code §16-9).

5.16.100 Overcrowding prohibited. No owner, lessee or keeper of any tenement house, lodginghouse, boardinghouse or manufactory shall cause or allow the same to be overcrowded, or cause or allow so great a number of person to dwell, be, or sleep in any house or any portion thereof, as thereby to cause any danger or detriment to health.

(Prior code §16-10).

5.16.110 Toilet facilities. Every person who is the owner, lessee or keeper or manager of any tenement house, boardinghouse, lodginghouse or factory shall provide or cause to be provided for the accommodation thereof, and for the use of the tenants, lodgers, boarders and workers therein, adequate privies, urinals and water closets, and the same shall be so adequately ventilated, and shall at all times be kept in such cleanly and wholesome condition as not to be offensive or to be dangerous or detrimental to health. (Prior code 516-11).

5.16.120 - Repairs--Generally. Every tenement house and every part thereof shall be kept in good repair, and shall be clean and free from any accumulation of dirt, filth, garbage or other matter in or on the same, or in the yard, courts, passages, areas or alleys connected with or belonging to the same. (Prior code §16-12).

5.16.130 Repairs--Toilet and sink floors and surfaces. The floor and other surface around or beneath any water closet and every sink in every tenement shall be maintained in good order and repair. (Prior code §16-13).

5.16.140 Conveniences and receptacles--Water service-Watertight cellar requirement.

A. Every house designated in Section 5.16.010 erected or converted after the effective date of the ordinance codified in this chapter shall have proper conveniences and receptacles for ashes and rubbish;
B. It shall have water furnished at one or more places in such house or in the yard thereof, so that the same may be adequate and reasonably convenient for. the use of the occupants thereof;
C. It shall have the floor of the cellar properly cemented so as to be watertight. (Prior code §16-14(part)).

5.16.150 Hall ventilation and lighting requirements. The hall of each floor shall open directly to the external air, with suitable windows, and shall have no room or other obstruction at the end, unless sufficient light or ventilation is otherwise provided for such hall in a manner approved by the building inspector. (Prior code §16-14(part)).

5.16.160 Garbage receptacles--Storage of combustibles and animal keeping prohibited.

A. Every tenement house or lodginghouse shall have proper and suitable conveniences or receptacles for receiving garage and other refuse matter.
B. No tenement house or lodginghouse, nor any portion thereof, shall be used as a place of storage for any combustible article, or any article dangerous or detrimental to health; nor shall any horse, calf, cow, swine, pig, sheep or goat be kept in any such house. (Prior code §16-15).

5.16.170 Cleanliness--Contagious disease disinfection requirement.

A. The owner or keeper of any lodginghouse, and the owner, agent of the owner, and the lessee of any tenement house or part thereof, shall, whenever any person in the house is sick of fever or of any infectious, pestilential or contagious disease, and the sickness is known to the owner, keeper, agent or lessee, give immediate notice thereof to the city health officer or sanitary inspector, and thereupon such officer shall cause the same to be inspected.
B. The officer may, if found necessary, cause the same to be immediately cleaned or disinfected at the expense of the owner in such manner as the health officer may deem necessary and effectual, and may also cause the blankets, bedding and bed clothes used by any sick person to be thoroughly cleaned, scoured and fumigated, or in extreme cases, to be destroyed. (Prior code §16-16).

5.16.180 Cleanliness - - Filth or human wastes prohibited.

A. Every part of every tenement house and lodginghouse and of every yard, court, passage, area or alley connected with or belonging thereto shall at all times be kept clean. No filth, urine or fecal matter shall be placed in any part of a tenement house or lodginghouse or in any yard, court, passage, area or alley, connected therewith or belonging thereto except in such parts thereof as may be specially provided for that purpose.

B. No filth, urine or fecal matter shall be kept in or upon any tenement house or lodginghouse or in any yard, court, passage, area or alley connected therewith or belonging thereto so long as to create a nuisance. (Prior code §16 - 17) .

5.16.190 Cleanliness - - Disinfection upon health officer request. The health officer of the city, or any officer connected with the board of health of the city, may require the licensee of any building wherein a sleeping apartment is provided to cleanse and disinfect all parts of such building used for a lodginghouse or sleeping purposes, and the furniture therein, to the satisfaction of the board of health. (Prior code §16 - 18).

5.16.200 Applicability of chapter. The provisions of this chapter shall not apply to the owners or occupants of private residences who shall rent rooms to persons from month to month. (Prior code §16 - 19).

Chapter 5.20

JUNK DEALERS

Sections:

5.20.010 Junk dealer defined.
5.20.020 License - - Posting requirement.
5.20.030 License - - Issuance - - Fee.
5.20.040 License - - Revocation.
5.20.050 Record book - - Penalty for false information.
5.20.060 Inspection of record book.
5.20.070 Property - - Retention period.
5.20.080 Property - - Preservation during retention period.
5.20.090 Dealings with minor.
5.20.100 Lost or stolen articles.
5.20.110 Exemptions.
5.20.120 Auto wrecking plants prohibited.

5.20.010 Junk dealer defined. "Junk dealer" means any person engaged in or carrying on the business of buying or selling or dealing in junk, rags, old rope, paper, bagging, old iron, iron bars, copper, brass, tin, empty bottles, rubber, lead, hides, batteries, watches or jewelry of any and all kinds, or any other article that is commonly called "junk." (Ord. 1969 (part), 1978: prior code §22 - 26).

5.20.020 License - - Posting requirement. The city treasurer may issue a license to any person desiring to engage in business as a junk dealer pursuant to licensing provisions contained in Chapter 5.08.

(Ord 3524, 2014, Ord. 3461, 2011; Ord. 1969 (part), 1978: prior code §22 - 27).

5.20.030 License—Issuance—Fee The City Council shall establish and amend fees relating to licensing junk dealers by resolution after conducting a public hearing.

A. The city treasurer may issue a license to any person desiring to engage in business as a junk dealer pursuant to licensing provisions contained in Chapter 5.08.

B. Any junk dealer also engaging in the business of secondhand dealing or pawn broking must have an endorsement on the business license indicating the types of business engaged in. No additional license fee shall be charged for extra endorsements, except that any business also engaging in pawnbroking must pay an additional fee to offset additional costs of regulating pawnbrokers.

(Ord. 3524, 2014; Ord. 3500, 2013; Ord. 3477, 2012; Ord. 3434 §5, 2010; Ord. 3383 §5, 2008; Ord. 3351 §5, 2007; Ord. 3322, §6, 2006; Ord. 3299, 2005; Ord. 3258, § 5, 2004; Ord. 3229, 2003; Ord. 1969 (part), 1978: prior code §22-28).

5.20.040 License – Revocation. Every license issued pursuant to the terms of this chapter may be revoked by the city council on satisfactory causes appearing to them for so doing, or for the violation of any of the provisions of this chapter, or for conviction of any federal, state, or local offense pertaining to theft, dealing in stolen goods, or deceptive practices. (Ord. 1969 (part), 1978: prior code §22-29).

5.20.050 Record book- - Penalty for false information.

A. Every junk dealer shall keep a permanent book with chronologically numbered pages in which shall be legibly printed or typed the precise time of purchase of any article or thing in the course of the junk dealer's business, an accurate account and description of the article or thing so purchased, the price paid therefor, the name, residence, a number from a photo identification card or reasonable proof of identity, as well as a full name signature of the person from whom such purchase was made. No entry in the book shall be erased, obliterated, defaced, or altered in any manner.

B. It shall be a misdemeanor punishable as set forth in Section 5.08.160 for any individual selling or purchasing articles or goods to give false information regarding any of the information required pursuant to this section. (Ord. 1969 (part), 1978: prior code §22- 30).

5.20.060 Inspection of record book. Every such dealer shall, during the ordinary hours of business or at any reasonable time, when requested by any peace officer as defined pursuant to Montana state law, submit and exhibit the book required to be maintained by this act to the peace officer for inspection and shall also, upon request, exhibit any article or thing purchased or received. (Ord. 1969 (part), 1978: prior code §22- 31).

5.20.070 Property- - Retention period. No personal property or article of any kind purchased or received by any such dealer shall be sold or allowed to be taken from the place of business of such dealer for ten business days. Whenever any peace officer as defined by Montana state law shall notify any such dealer not to sell or otherwise dispose of any article or thing purchased or received by him, such article or thing shall not be sold or otherwise disposed of until the expiration of twenty days after the giving of notification. (Ord. 1969 (part), 1978: prior code §22- 32).

5.20.080 Property- - Preservation during retention period. No junk dealer shall break, burn, melt, cut, tear, or mutilate any article or thing purchased or received by him, so as to in any way change the form, shape, appearance, or condition of the article or thing, nor shall he cause or permit the same to be done, until at least ten business days after the purchase of the article or thing, unless he is before such time notified not to so mutilate, burn, melt, cut, tear, or break any such article or thing. (Ord. 1969 (part), 1978: prior code§22- 33).

5.20.090 Dealings with minor. No person, licensed as set forth in this chapter, shall purchase any goods, articles or thing whatsoever from a minor. (Ord. 1969 (part), 1978: prior code 522- 34).

5.20.100 Lost or stolen articles.

A. Every junk dealer who shall receive or be in possession of any goods, articles, or thing which may have been lost or stolen, shall forthwith on demand to view the same, exhibit the same to any police officer as defined by Montana state law.

B. If any goods, articles, or thing shall be listed on any sheet of stolen items circulated by law enforcement authorities; and if any of the said goods, articles, or thing so advertised or listed by law enforcement authorities or any part or portion thereof, shall then or thereafter come into the possession of any dealer in junk articles, such person shall forthwith file information thereof in writing at the office of the chief of police, and shall also state through whom the same was received. (Ord. 1969 (part), 1978: prior code §22- 35).

5.20.110 Exemptions. The provisions of this chapter shall not apply to persons engaged only in buying or collecting rags, paper to be used exclusively in the manufacturing of paper, or recycling of cans or bottles. If any of these businesses purchase any items other than rags, paper, cans or bottles, records must be kept of any such transactions pursuant to Section 15.20.050. (Ord. 1969 (part), 1978: prior code §22- 36).

5.20.120 Auto wrecking plants prohibited. No person shall own, operate, lease, conduct, permit or suffer to be permitted an automobile wrecking plant or junk yard, or the accumulation of wrecked automobiles, scrap iron or junk,

upon any vacant lot or in any unenclosed building within the limits of the city. (Prior code §22-45).

Chapter 5.24

PAWNBROKERS

Sections:

5.24.010 Pawnbroker defined.
5.24.020 License--Posting requirement.
5.24.030 License--Issuance--Fee.
5.24.040 License--Revocation.
5.24.050 Engaging in more than one business.
5.24.060 Record book--Penalty for false information.
5.24.070 Proof of identity--Penalty for false information.
5.24.080 Inspection area.
5.24.090 Memorandum or pawn ticket.
5.24.100 Report to chief of police.
5.24.110 Lost or stolen articles.
5.24.120 Dealing with minors.
5.24.130 Hours of business.

5.24.010 Pawnbroker defined. "Pawnbroker" means any person engaged in conducting, managing or carrying on the business of loaning money for himself or for another, upon personal property, personal security, pawns or pledges, or engaged in the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the vendors, or their assigns, at prices agreed on, at or before the time of purchase.

(Ord. 1969 (part), 1978: prior code §22-1).

5.24.020 License--Posting requirement.

A. It shall be unlawful for any person to conduct or carry on the business of a pawnbroker, loan broker, or keeper of a loan office without being specifically licensed for such purpose at any place or location other than the one designated in such license, and under such regulations as provided in this chapter.

B. The license plus a current copy of the city ordinance pertaining to pawnbrokers must be posted in a prominent place within the pawnshop.

(Ord. 1969 (part), 1978: prior code §22-2).

5.24.030 License—Issuance—Fee.
The City Council shall establish and amend fees relating to licensing pawnbrokers by resolution after conducting a public hearing.

A. The city treasurer may issue a license to any person desiring to engage in business as a pawnbroker pursuant to licensing provisions contained in Chapter 5.08. In addition to the license fee required by that chapter, a person engaging in pawn broking must pay an additional fee to offset costs of regulating pawnbrokers.

B. Any pawnbroker also engaging in the businesses of secondhand or junk dealing must have an endorsement on the business license indicating the types of business engaged in. No additional license fee shall be charged for these endorsements.

(Ord. 3524, 2014; Ord. 3500, 2013; Ord. 3461, 2011; Ord. 3434 §6, 2010; Ord. 3383 §6, 2008; Ord. 3351 § 6, 2007; Ord. 3322 §6, 2006; Ord. 3299 § 6, 2005; Ord. § 6, 2004; 3258 Ord. 3229, 2003; Ord. 1969 (part), 1978: prior code §22-3)

5.24.040 License--Revocation. The city council may revoke the license of any pawnbroker who willfully or re- peatedly fails to observe the provisions of this chapter or Chapters 5.16 and 5.24, or who shall plead guilty or be convicted of any Federal, state or local offense involving theft, dealing with stolen property or deceptive practices.

(Ord. 1969 (part), 1978: prior code §22‑4).

5.24.050 Engaging in more than one business. A pawnbroker may operate a secondhand dealer business or junk dealer business at the same location as a pawnbroker business is operated. Separate registers shall be maintained for transactions involving pawnbroker, secondhand dealer, or junk dealer business. The business operator shall comply with all city ordinances applicable to each type of business engaged in.

(Ord. 3530, 2014; Ord. 1969 (part), 1978: prior code 522‑5).

5.24.60 Record Keeping – Register ‑ ‑ penalty for false information.

A. Every pawnbroker, loan broker, or keeper of a loan office, shall keep a permanent register that records, at the time of each loan, an accurate account and description of all goods, articles, or things pawned or pledged or purchased and the time given to redeem or repurchase, the amount of money loaned or paid thereon, the time of pledging or purchasing the same and paying therefore, the rate of interest to be paid on the loan or amount for which the same may be repurchased, the name, residential address, and a number from the photograph identification card or reasonable proof of identity from the person pledging or selling the articles or things and a personal description of the person. No entry or record shall be erased, deleted, obliterated, defaced, or altered in any manner. The person pawning or selling an article must sign his or her full name on the receipt for the article(s) pawned and a copy of such receipt shall be kept by the Pawnbroker.

B. The register as well as every article or thing so pawned, pledged, or purchased shall at all times be open to inspection by any peace officer as defined pursuant to Montana state law. Every article received that has a resale value greater than twenty-five dollars must be numbered with a number that corresponds with the number in the register for that particular article.

C. It shall be a misdemeanor punishable as set forth in Section 5.08.160 for an individual selling or purchasing articles or goods to give false information regarding any of the information required pursuant to this section.

(Ord. 3551, 2015; Ord. 3530, 2014; Ord. 1969 (part), 1978: prior code §22‑6).

5.24.070 Proof of identity‑ ‑ Penalty for false information.

A. Each individual pledging or selling any article must show a photo identification card of himself or herself or reasonable proof of identity to the pawnbroker.

B. It shall be a misdemeanor punishable as set forth in Section 5.08.170 for an individual pledging or selling articles to give false information regarding any of the information required pursuant to this section.

(Ord. 1969 (part), 1978: prior code §22‑7).

5.24.080 Inspection area. Every pawnbroker and loan broker, or keeper of a loan office shall set aside an area within the pawnshop wherein he must keep all articles received during the most recent ten business days in order to facilitate examination and inspection by law enforcement authorities of all new articles received. Items which are pawned as a group but which may be sold individually shall be kept together until inspected by law enforcement authorities. (Ord. 1969 (part), 1978: prior code §22‑8).

5.24.090 Memorandum or pawn ticket. Every pawnbroker or loan broker, or keeper of a loan office, shall, at the time of each loan or purchase, deliver to the person pawning, pledging, or selling any goods, article or thing, a memorandum, receipt, note, pawn ticket or pawn stub signed by the pawnbroker containing the name of pledge, date, and description of item, and no charge shall be made for any such memorandum or note.
(Ord. 3530, 2014; Ord. 1969 (part), 1978: prior code 522‑9).

5.24.100 Report to chief of police.

A. It shall be the duty of every pawnbroker, loan broker, or keeper of a loan office, subject to the exceptions below, to electronically transfer an accurate account of all items pawned or purchased by the pawnbroker, loan broker or keeper of a loan office including but not limited to, an accurate description of the item, the pawn number of the item, any corresponding serial number of the item, any other information that would assist in identifying the item, the name, residential address of the person pledging or selling the articles or things and a personal description of the person as well as the identification type and number on the identification, to a designated person at the Missoula Police Department or by uploading that information to a software platform selected by the Missoula Police Department, on or before a time each day that shall be determined by the Missoula Police Department.

B. If a pawnbroker, loan broker, or keeper of a loan office elects to report electronically but not upload the information to a software platform selected by the Missoula Police Department, the pawnbroker, loan broker, or keeper of a loan office shall electronically provide the information required in Subsection A above, in a non-proprietary format prescribed by the Missoula Police Department to best facilitate the information's bulk transfer into the Missoula Police Department's electronic record keeping system. A pawnbroker, loan broker or keeper of a loan may make a written election requesting the Missoula Police Department redact the name, residential address, personal description of the person and identification type and identification number prior to transferring the information to a software platform selected by the Missoula Police Department. This written election is valid until withdrawn in writing by the pawnbroker, loan broker, or keeper of a loan. The Missoula Police Department shall confirm in writing to the pawnbroker, loan broker or keeper of a loan office that it has received the election and that it is complying with the redaction requirements of this Section 5.24.100 B.

C. No personal property or thing received on deposit, pledge, or purchased by the pawnbroker shall be sold or removed from the place of business of such pawnbroker, other than by redemption, for a period of thirty days after the daily report of transactions is made to the designated member of the police department.

D. The chief of police or a member of the police department may authorize the sale or redemption of any article before the expiration of the aforementioned thirty day period if the item has been inspected by the police and there does not appear to be any reason to keep the article any longer.

(Ord. 3551, 2015; Ord. 3530, 2014; Ord. 1969 (part), 1978: prior code §22‑10).

5.24.110 Lost or stolen articles. Every pawnbroker who shall receive or be in possession of any goods, articles, or thing which may have been lost or stolen, shall forthwith on demand to view the same, exhibit the same to any police officer as defined by state law. (Ord. 1969 (part), 1978: prior code §22‑11).

5.24.120 Dealing with minors. No pawnbroker shall take or receive in pawn or pledge or shall purchase any property or goods from a child under the age of majority, whether the same be owned or claimed by such minor in his possession and control. (Ord. 1969 (part), 1978: prior code §22‑12).

5.24.130 Hours of business.

A. The hours of operation of a pawnshop shall be posted in a prominent place on the outside of the business structure.

B. No pawnbroker shall receive on deposit or pledge or purchase any property of any kind before the hour of seven o'clock a.m. or after the hour of seven o'clock p.m., and no such business shall be kept open for any purpose after the hours of seven o'clock p.m. and before the hour of seven o'clock a.m. (Ord. 1969 (part), 1978: prior code §22‑13) .

Chapter 5.28

SECONDHAND DEALERS

Sections:

5.28.010 Secondhand dealer defined.
5.28.020 License‑‑Required.
5.28.030 License‑‑Issuance‑‑Fee.
5.28.040 License‑‑Revocation.
5.28.050 Engaging in more than one business.
5.28.060 Record book‑‑Penalty for false information.
5.28.070 Proof of identity.
5.28.080 Inspection area.
5.28.090 Report to chief. of police.
5.28.100 Hours of operation.
5.28.110 Dealings with minors.
5.28.120 Lost or stolen articles.

5.28.010 Secondhand dealer defined. "Secondhand dealer" means any person who within the city, as a business, engages in the purchase, sale, trade, barter, consignment, or exchange of secondhand goods, wares, or

merchandise,
other than those businesses that deal exclusively in the following items: junk, furniture, stoves, refrigerators, sewing machines other than portables or washing machines; or any person who keeps any store, shop, room, or place where secondhand goods, wares, or merchandise, of any kind or description other than junk, furniture, stoves, refrigerators, sewing machines or washing machines are bought, sold, traded, bartered, consigned, or exchanged. (Ord. 1969 (part), 1978: prior code §22‑14).

5.28.20 cense‑‑Required.

A. It is unlawful for any person to conduct or carry on the business of dealing in secondhand furniture, household goods, or other articles without being specifically licensed for such purpose, nor shall any person conduct or carry on any such business at any place or house other than the one designated in such license and under such regulations as provided in this chapter.
B. The license plus a current copy of the city ordinance pertaining to secondhand dealers must be posted in a prominent place within the secondhand store. (Ord. 1969 (part), 1978: prior code §22‑15).

5.28.030 License—Issuance—Fee.

5.28.030 License—Issuance—Fee.
The City Council shall establish and amend fees relating to licensing second hand dealers by resolution after conducting a public hearing.

A. The city treasurer may issue a license to any person desiring to engage in business as a secondhand dealer pursuant to licensing provisions contained in Chapter 5.08.

B. Any secondhand dealer also engaging in the business of pawn broking or junk dealing must have an endorsement on the business license indicating the types of business engaged in. No additional license fee shall be charged for extra endorsements, except that any business also engaging in pawnbroking must pay an additional fee to offset additional costs of regulating pawnbrokers.

(Ord. 3524, 2014; Ord. 3500, 2013; Ord. 3477, 2012; Ord. 3461, 2011; Ord. 3434 §7, 2010; Ord. 3383 §7, 2008; Ord. 3351 §7, 2007; Ord. 3322 §7, 2006; Ord. 3299 §7, 2005; Ord. 3258 § 7, 2004; Ord. 3229, 2003; Ord. 1969 (part), 1978: prior code §33-16).

5.28.040 License‑‑Revocation. The city council may revoke the license of any secondhand dealer who willfully or repeatedly fails to observe the provisions of this chapter or the chapters pertaining to secondhand dealers or junk dealers or who pleads guilty or is convicted of any violation of any of the provisions of this chapter, or Chapter 5.20, or who pleads guilty or is convicted of any Federal, state, or local offense involving theft, dealing in stolen property or deceptive practices. (Ord. 1969 (part), 1978: prior code §22‑17).

5.28.050 Engaging in more than one business. A secondhand dealer may operate a pawnbroker business or junk dealer business at the same location as a secondhand dealer business is operated. Separate record books shall be maintained for transactions involving secondhand dealer, pawnbroker, or junk dealer business. The business operator shall comply with all city ordinances applicable to each type of business engaged in. .(Ord. 1969 (part), 1978: prior code §22‑18).

5.28.060 Record book‑‑Penalty for false information.

A. Every secondhand dealer shall keep a permanent book with chronologically numbered pages in which shall be legibly printed or typed, the precise time of purchase of any article or thing in the course of the secondhand dealer's business, an accurate account and description of the article or thing so purchased, the price therefor, the name, residence, a number from a photo identification card or reasonable proof of identity, a personal description of, as well as a full name signature of the person from whom the purchase was made. No entry in the book shall be erased, obliterated, defaced, or altered in any manner.

B. The book shall be open to the inspection of any peace officer as defined pursuant to state law at all times.

C. Every article received that has a resale value greater than twenty‑five dollars must be numbered with a number that corresponds with the number in the record book for that particular article.

D. It is a misdemeanor punishable as set forth in Section 5.08.160 for an individual selling or purchasing articles or goods to give false information regarding any of the information required pursuant to this section. (Ord. 1969 (part), 1978**:** prior code §22‑19).

5.28.070 Proof of identity. Each individual pledging or selling any article must show a photo identification card of himself or herself or reasonable proof of identity to the secondhand dealer. (Ord. 1969 (part), 1978: prior code §22‑20) .

5.28.080 Inspection area.

A. Every secondhand dealer shall set aside an area within the secondhand dealer's business wherein he must keep all articles received during the most recent ten business days in order to facilitate examination and inspection by law enforcement authorities of all new articles received. No article purchased by the secondhand dealer shall be sold or removed from the place of business of the secondhand dealer for a period of ten business days after the copy of the transactions required to be made available to the chief of police or a member of the police department shall have been prepared as required by this chapter.

B. The chief of police or a member of the police department may authorize the sale of any article before the expiration of the aforementioned ten day period if the item has been inspected by the police and there does not appear to be any reason to keep the article any longer. (Ord. 1969 (part), 1978: prior code §22‑21).

5.28.090 Report to chief of police. It is the duty of every secondhand dealer to make out and make available every day before the hour of twelve o'clock noon to the chief of police or a member of the police department an exact legible and correct copy of the transactions from the previous day from the book required to be kept pursuant to Section 5.28.060. (Ord. 1969 (part), 1978: prior code §22‑22).

5.28.100 Hours of operation. The hours of operation of a secondhand dealer shall be posted in a prominent place on the outside of the business structure. (Ord. 1969 (part), 1978: prior code §22‑23).

5.28.110 Dealings with minors. No person, licensed as set forth in this chapter, shall purchase any goods, articles, or thing whatsoever from a minor. (Ord. 1969 (part), 1978: prior code §22‑24).

5.28.120 Lost or stolen articles. Every secondhand dealer who shall receive or be in possession of any goods, articles, or thing which may have been lost or stolen, shall forthwith on demand to view the same, exhibit the same to any police officer as defined by state law. (Ord. 1969 (part), 1978: prior code §22‑25).

Chapter 5.32

SELF‑SERVICE GAS STATIONS

Sections:

5.32.010 Pumps to be equipped with automatic shut‑off nozzles.
5.32.020 Firefighting equipment requirement.
5.32.030 Public address system requirement.
5.32.040 No smoking requirement.
5.32.050 Number of attendants required.

5.32.010 Pumps to be equipped with automatic shut‑off nozzles. Pumps in self‑service gas stations shall be equipped with automatic shut‑off filling nozzles which cut the flow of gasoline when the vehicle tank is full. (Prior code
§11‑29).

5.32.020 Firefighting equipment requirement. Self-service gas stations shall be equipped with firefighting equipment consisting of one four or five pound CO2 extinguisher at each island and a fifteen pound C02 extinguisher in the office. (Prior code §11‑30).

5.32.030 Public address system requirement. Self-service gas stations shall be equipped with a public address system. (Prior code §11‑31).

5.32.040 No smoking requirement. Self- service gas stations shall strictly enforce a "no smoking" order. (Prior code §11- 32).

5.32.050 Number of attendants required. One attendant for every two islands shall be on duty at all times at a self- serving gas station except during the overnight shift. (Prior code §11- 33).

Chapter 5.36

GOING OUT OF BUSINESS OR FIRE OR OTHER ALTERED STOCK SALES

Sections:

5.36.010 Definitions.
5.36.020 License- - Required.
5.36.030 Established business requirement.
5.36.033 Exception for survivors of businesspersons
5.36.035 Denial of future business licenses
5.36.037 Location restricted
5.36.39 Licensing exemptions
5.36.40 Application requirements.
5.36.045 Fee.
5.36.050 Issuance.
5.36.060 Licensing period.
5.36.070 Renewal procedure.
5.36.080 Nature of sale limitation.
5.36.090 Saleable goods.
5.36.100 Nontransferability.
5.36.110 Duties of licensee.
5.36.120 Enforcement.
5.36.130 Violation- - Penalty.

5.36.010 Definitions. T The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

A. "City" means the City of Missoula.

B. “Bona fide orders” means orders of goods purchased for resale placed in excess of ninety days prior to the sale without cancellation privileges. Bona fide orders shall not comprise goods purchased on consignment.

C. "Business licensing" means the office responsible for licensing businesses in the city.

D. "Fire and other altered or damaged goods sale" means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.

E. "Going- out- of- business sale" means a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock of goods on hand the entire business operation will cease and be discontinued at its existing location. This definition includes but is not limited to the following sales: Adjuster's, Adjustment, Alteration, Assignee's, Bankrupt, Benefit of Administrator's, Benefit of Creditor's, Benefit of Trustees, Building Coming Down, Closing, Creditor's Committee, Creditor's End, Everything Must Go, Executor's, Final Days, Forced Out, Forced Out of Business, Insolvent, Last Days, Lease Expires, Liquidation, Loss of Lease, Mortgage Sale, Receiver's, Trustee's, Quitting Business, Retirement.

F. "Goods" means any goods, wares, merchandise or other property being capable of being the object of a sale regulated hereunder.

G. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind. (Ord. 3515 §1, 2013 Ord. 1989 (part), 1979: prior code §18- 15).

5.36.020 License- - Required. A license issued by business licensing shall be obtained by any person before offering to sell any goods at a sale to be advertised or held out by any means to be one of the following kinds:

A. Going- out- of- business sale;

B. Fire and other altered stock sale; and

(Ord. 3515 §2, 2013; Ord. 1989 (part), 1979: prior code §18- 16).

5.36.030 Established business requirement for going out of business sales

Any person applying for a going out of business sale license regulated under this chapter must have been the owner of the business for a period of at least twelve months prior to the date of the proposed sale. This minimum may be waived by the Mayor following a recommendation of business licensing whenever a hardship is shown to exist and following proper application of the owner of such a business. The application must explain in detail what the hardship is and why the license is needed. The business must be physically located in the city limits.

(Ord. 3515 §3, 2013; Ord. 1989 (part), 1979: prior code §18- 17).

5.36.033 Exception for survivors of businesspersons.
Upon the death of a person doing business in this city, his or her heirs, devisees or legatees, shall have the right to apply at any time for a license hereunder.
(Ord. 3515 §4, 2013)

5.36.035 Denial of future business licenses.
The City of Missoula will not license a business with the same business name and/or corporation/LLC name as a business that has held a going out of business sale for a period of one year from the ending date of the sale listed in the application.
(Ord. 3515 §5, 2013)

5.36.037 Location restricted.
Where a person applying for a license hereunder operates more than one place of business, the license issued shall apply only to one store, or branch specified in the application and no other store or branch shall advertise or represent that it is cooperating with it, or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.
(Ord. 3515 §6, 2013)

5.36.39 Licensing exemptions
The provisions in this chapter shall not apply to or affect the following persons:

A. Persons acting pursuant to an order or process of a court of competent jurisdiction;

B. Persons acting in accordance with their powers and duties as public officials;

C. Duly licensed auctioneers, selling at auction;

D. Persons conducting a sale of the type regulated herein on the effective date of the ordinance codified in this chapter, unless such sale is continued for a period of more than thirty days from and after such effective date, in which event, such person, at the lapse of the thirty day period, shall comply with the provisions of this chapter.

E. Any publisher of a newspaper, magazine or other publication who publishes in good faith, any advertisement without knowledge of its false, deceptive or misleading character, or without knowledge that the provisions of this chapter have not been complied with.

(Ord. 3515 §7, 2013)

5.36.40 Application requirements.

A person desiring to conduct a sale regulated by this chapter shall make a written application to the city clerk setting forth and containing the following information:

A. The true name, address, and phone number of the owner of the goods to be the object of the sale; as well as the true name, address, and phone number of the business;

B. The true name and address of the person from whom he purchased the goods to be sold and the price therefor, and if not purchased, the manner of such acquisition;

C. A description of the place where the sale is to be held;

D. The nature of the occupancy, whether by lease or sublease and the effective date of termination of such occupancy;

E. The dates of the period of time in which the sale is to be conducted;

F. A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted;

G. A complete and detailed list of the types of goods to be sold at such sale as well as the total dollar value of the items as disclosed by the applicant's records. The inventory shall be attached to and become part of the required application. The mayor or the city council, if the application is referred to the city council, may request a complete and detailed inventory of the goods to be sold at such sale as disclosed by the applicants records:

1. Bona Fide Orders. All goods included in such inventory shall have been purchased by the applicant for re-sale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment,

2. Goods Purchased for Sale Under this Chapter. Such inventory shall not include goods ordered in contemplation of conducting a sale regulated under this chapter. Any unusual purchase, or additions to the stock of goods of the business affected within ninety days before the filing of an application hereunder shall be deemed to be of such character.

The applicant must have a current city business license at the time of the application.

The location of the sale must comply with the city's zoning ordinances which include the City's signage regulations.

The location of the sale and the conduct of the sale must comply with the city's fire and building codes.
(Ord. 3515 §8, 2013; Ord. 1989 (part), 1979: prior code §18‑18).

5.36.045 Fee

The fee for a license issued pursuant to this chapter shall be established and amended by resolution after conducting a public hearing.

(Ord. 3524, 2014; Ord. 3515 §9, 2013)

5.36.050 Issuance and appeal procedure.
A license which includes the application, inventory list, bona fide orders and any other information shall be issued by business licensing under this chapter on the following terms:

A. Business licensing shall review the application for compliance with the regulations set forth herein and then refer the application to the Mayor for approval. If the Mayor refuses to approve an application and issue a license, the applicant may appeal to the City Council. The City Council may approve, conditionally approve, or deny the application.

B. When ordered by a court of competent jurisdiction following the denial of a license by the Mayor and the City Council.
(Ord. 3515 §10, 2013; Ord. 1989 (part), 1979: prior code §18‑19).

5.36.060 Licensing period The license shall authorize the sale described in the application for a period of not more than ninety (90) consecutive calendar days, The start of the ninety(90) day period shall begin on the sale date

described in the application or the first public advertisement whichever is sooner. No renewals or extensions of the ninety (90) day sale duration shall be granted. (Ord. 3515 §11, 2013; Ord. 1989 (part), 1979: prior code §18‑20).

5.36.070 Repealed (Ord. 3515 §12, 2013; Ord. 1989 (part), 1979: prior code §18‑21).

5.36.080 Nature of sale limitation. The license shall authorize only the one type of sale described in the application at the location named therein. (Ord. 3515 §13, 2013; Ord. 1989 (part), 1979: prior code §18‑22).

5.36.090 Saleable goods. The license shall authorize only the sale of goods described in the application or in the inventory attached to the application. (Ord. 3515 §14; Ord. 1989 (part), 1979: prior code 518‑23).

5.36.100 No transferability. Any license provided for in this chapter shall not be assignable or transferable. (Ord. 3515 §15, 2013; Ord. 1989 (part), 1979: prior code §18‑24).

5.36.110 Duties of licensee. A licensee shall:

A. Adhere to the inventory list approved in the application. Licensees shall make no additions whatsoever to the stock of goods to be sold during the period of the licensed sale. Licensees shall not take orders from customers for goods during the sale that are not included on the approved inventory list unless the goods are listed on the bona fide orders submitted with the approved application;

B. Advertise in good faith refraining from employing any untrue, deceptive or misleading advertising;

C. Conspicuously display the license at or near the entrance to the business;

C. Adhere to advertising requirements and conduct the licensed sale in strict conformity with any advertising or holding out incident thereto;

D. Keep a duplicate copy of the inventory list submitted with the application readily available at the place of sale and shall present such duplicate to inspecting officials upon request;

E. Between the 45th and 50th day of the sale, the licensee shall submit an updated inventory list meeting the requirements outlined in 5.36.040 (G) to business licensing and keep a duplicate copy of the list readily available at the place of the sale. Failure to submit an update inventory list to business licensing will result in the immediate revocation of the sale license.

F. Close the doors of any store location from which a going-out-of-business sale has been held at the termination of the ninety (90) day license period and shall not engage in any further business activity for which a going-out-of-business license was issued in or from such location.

G. At the termination of the time period allowed for a going-out-of-business sale, immediately cease and discontinue the business in Missoula for which a going-out-of-business license was issued.

(Ord. 3515 §16, 2013; Ord. 1989 (part), 1979: prior code §18‑25) .

5.36.120 License display, merchandise examination and advertisement requirements

A. On commencement of any sale as defined in Section 5.36.010, the license issued by business licensing shall be prominently displayed near the entrance to the premises.

B. The licensee shall permit City inspectors, Mayor, City officials, and City Council members to examine all merchandise in the premises at any time during the period of the sale for comparison with the approved inventory list and bona fide orders.

C. All advertisements and advertising and the language contained therein shall be in accordance with the purpose of the sale as stated in the approved application pursuant to which the license was issued, and the wording of such advertisements shall not vary from the wording as indicated in the application. Applicants shall ensure any signage associated with the sale conforms to the City's signage regulations set forth in Chapter 20.75 Missoula Municipal Code.

D. Advertising for the sale shall in no manner or form whatsoever, either directly or indirectly, indicate that such sale is held with the approval of the city.

E. Such advertising shall contain the following statement: "Sale held pursuant to License Number..... issued by the City of Missoula on ....." and in such blank spaces shall be indicated the license number and the date of issuance of the license.

(Ord. 3515 §17, 2013; Ord. 1989 (part), 1979: prior code§18‐ 26).

5.36.130 Violation‐ ‐ Penalty. Any person violating the provisions of this chapter shall, upon conviction thereof, be fined not less than five hundred dollars. Each day's violation shall constitute a separate offense.
Upon conviction of any person for violating the provisions of this chapter, the court shall order the immediate revocation of the person's business license and any license issued pursuant to this chapter. (Ord. 3515 §18, 2013; Ord. 1989 (part), 1979: prior code §18‐ 27).

Chapter 5.40

BOILERROOM OPERATION

Sections:

5.40.010 Definitions.
5.40.020 License‐ ‐ Required.
5.40.030 License‐ ‐ Fees.
5.40.040 License‐ ‐ Bond.
5.40.050 License‐ ‐ Revocation.
5.40.055 Exclusions.
5.40.060 Violation‐ ‐ Penalty.

5.40.10 finitions. For the purposes of this chapter, the words set out below shall have the following meanings:

A. "Boilerroom operation" means and includes any of the following:

1. Any mass telephone solicitation operated by any person, as defined in this section, using one or more telephones each operated by an employee whose principal duty is to solicit by telephone, whether located in the same room or building or not, for the purpose, directly or indirectly, of selling any product or service, including renewals and cancellations or combination thereof, whatsoever, to the general public for which any monetary consideration is charged to and received from the person being so solicited;

2. The use of any automatic telephone device or devices to contact the general public under any pretext whatsoever for the purpose, directly or indirectly, of selling any product or service, including renewals and cancellations, or any combination thereof, whatsoever, to the general public for which any monetary consideration is charged to and received from the person being so contracted.

B. "Conduct" means initiating telephone calls from without the city and completing them within the city, as well as initiating telephone calls from within the city.

C. "Person" means natural person, partnership, corporation, organization, or any combination of the same. (Ord. 2707 §1, 1989: Ord. 2185 §1, 1981: Ord. 1981 (part), 1978: prior code §18‐ 14.3 (part)).

5.40.020 License‐ ‐ Required.

The City Council shall establish and amend fees relating to background investigations of persons involved with boiler room operations by resolution after conducting a public hearing.

A. No person shall conduct any boiler room operation within the city, without first obtaining a business license therefor and paying in advance the license fee for conducting such operation set forth hereafter. Application for the license shall be made to the city treasurer on forms to be provided by and retained by the city treasurer. The license fee shall be paid to the city treasurer.

B. Nonprofit organizations are excluded from this chapter. However, if the nonprofit organization retains any business or professional promoter to organize and/or assist in a boiler room operation, that business or professional promoter must comply with the provisions of this chapter.

C. A background investigation of each person involved in a boiler room operation shall be conducted by the police department prior to the issuance of any license. A background investigation fee shall be paid to the city treasurer prior to the background investigation being conducted. The police department shall be allowed up to ten days to conduct background investigations of the applicants. If a license is denied by city officials' investigation the applicant may appeal to the city council for a hearing on the application.

(Ord. 3524, 2014; Ord. 2185 §2, 1981: Ord. 1981 (part), 1978: prior code §18‑14.3 (part)).

5.40.030 License—Fees.

The City Council shall establish and amend fees relating to licensing boiler room operations by resolution after conducting a public hearing.

Boiler room operations shall be licensed at a weekly rate for twenty-six consecutive weeks. After having been licensed for twenty-six consecutive weeks at the weekly rate, a boiler-room operation may choose to be licensed at the annual rate for up to seven phones. The annual license shall expire at the same time as general city business licenses. There shall be no prorating of annual licenses for boiler-room operations.

Whenever a boiler-room operation purchases an annual license) and later increases its number of telephones utilized for telephone solicitation to eight or more, it shall be required to pay an additional license fee in order to pay the full license equivalent for having eight or more telephones. All boiler-room operation license fees are nonrefundable.

(Ord. 3524, 2014; Ord. 3461, 2011; Ord. 3434 §8, 2010; Ord. 3383 §8; 2008; Ord. 3351 §8, 2007; Ord. 3322 §8, 2006; Ord. 3299 §8; Ord. 3258 §8, 2004; Ord. 3229, 2003; Ord. 2927 §3, 1995: Ord. 2707 §2, 1989: Ord. 2185§3, 1981: Ord. 1981 (part), 1978: prior code §18-14.3 (part)).

5.40.040 License‑‑Bond. No license shall be issued by the city treasurer until the applicant has answered fully all questions on the application form provided by the city treasurer and until the applicant has placed on file with the treasurer a surety bond executed by a surety company duly licensed to do business within the state in the amount of one thousand five hundred dollars, conditioned that the license shall fully comply with the terms of this chapter and shall pay any and all judgments which may be obtained against it or him on the part of any person arising out of such boilerroom operation or the performance, or breach, of any contract entered into as the result of such boilerroom operation. The bond shall remain in effect either for the period of one year from the expiration date of the license issued or until all judgments arising out of any legal action instituted within the one‑year period and covered by the bond have been fully satisfied and paid, whichever occurs last. (Ord. 2185 §4, 1981: Ord. 1981 (part), 1978: prior code §18‑14.3(part)).

5.40.050 License‑‑Revocation. Whenever the city council shall deem it in the public interest, it may, by resolution adopted by two‑thirds vote of all the members of the city council and approved by the mayor, refuse to authorize the issuance of or revoke any license issued for a boilerroom operation. (Ord. 2185 §5, 1981: Ord. 1981 (part), 1978: prior code §18‑14.3 (part)).

5.40.055 Exclusions. The provisions of this chapter pertaining to background investigations, license fees and bonding shall not be applicable to any business using telephone solicitation that has a permanently established business operation located within the city limits, if that business is:

A. Currently licensed pursuant to other city business licensing provisions;

B. Telephone solicitation is not the primary purpose of the business;

C. The telephone solicitation engaged in by that business is directly related to the services or products normally provided in the regular course of business operations for that type of business;

D. The telephone solicitation is conducted by permanent employees of the business on whose behalf the telephone solicitation is occurring.

Each of the four criteria identified herein must exist in order for any business to be excluded from the provisions of this chapter. (Ord. 2707 §3, 1989: Ord. 2185 §6, 1981) .

5.40.060 Violation - - Penalty. Every person carrying on or engaging in the transaction of any boilerroom operation without first procuring a background investigation for each employee and the proper business licenses, and any persons providing misinformation upon application for a license, shall be guilty of a misdemeanor and upon conviction shall be punished as provided by Chapter 1.20. Every day that a business is conducted without a license shall constitute a separate offense. (Ord. 2185 §7, 1981: Ord. 1981 (part), 1978: prior code §18 - 14.3 (part)).

Chapter 5.44

AMBULANCES (REPEALED, ORD. 3399, 2009)

Sections:

5.44.010 **Repealed** (Ord. 3399, 2009; Ord. 2904 §1, 1994: Ord. 2802 §1, 1991).

5.40.020 **Repealed** (Ord. 3399, 2009; Ord. 2802 §2, 1991).

5.44.030 **Repealed** (Ord. 3399, 2009; Ord. 2802 §3, 1991).

5.44.040 **Repealed** (Ord. 3399, 2009; Ord. 2802 §4, 1991).

5.44.050 **Repealed** (Ord. 3399, 2009; Ord. 2802 §5, 1991).

5.44.060 **Repealed** (Ord. 3399, 2009; Ord. 2802 §6, 1991).

5.44.070 **Repealed**(Ord. 3399, 2009; Ord. 2802 §7, 1991).

Chapter 5.45

AMBULANCE SERVICES

Sections
5.45.010 Purpose
5.45.020 Authority
5.45.030 Definitions
5.45.040 License Required
5.45.050 Standards for License
5.45.060 Performance Contract Required
5.45.070 Suspension of License and Performance Contract
5.45.080 Notice and Hearing Required for Cancellation and Termination
5.45.090 Exemptions
5.45.100 Violation and Penalty

5.45.010 Purpose. The purpose of this chapter is to:

A. Allow for the orderly and lawful operation of ambulance services in the city;

B. Enact regulations and policies necessary for the safety and well-being of the public in regard to ambulance services in the city. (Ord. 3399 §1, 2009)

5.45.020 Authority. As authorized by Montana state law, Title 7, Chapter 34, Part 1 M.C.A. entitled “Ambulance Services”, the city through its governing body may establish and maintain ambulance service for the city or may contract for ambulance services pursuant to the provisions of this chapter. (Ord. 3399 §2, 2009)

5.45.030 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

A. “Ambulance” shall have the same meaning as defined in Montana state law, 50‑6‑302, M.C.A.

B. "Ambulance business" means the business of owning, operating, managing or maintaining any ambulance service for receiving or picking up within the city for medical purposes handicapped, wounded, injured, ill or sick persons for transportation to any point within or without the city.

C. "License" means the city business license or renewed business license issued to any party to engage in the ambulance business.

D. “Ambulance service performance contract” means a binding agreement between the ambulance business and the City of Missoula containing performance criteria and other provisions designed to promote public safety and protect the public interest. (Ord. 3399 §3, 2009)

5.45.040 License Required.

A. No person shall engage in the ambulance business without first obtaining a license as provided in this chapter. The license fee shall be as determined in Chapter 5.08. All such licenses shall be for a city business licensure year or the remainder thereof. A license may be renewed annually subject to compliance with the provisions of this chapter. A license shall be non-transferable.

B. Any ambulance business licensed by the city as of the effective date of this ordinance shall be allowed to renew their license subject to compliance with the provisions of this chapter. No license shall be issued under this chapter to any new applicant unless the city council determines that another ambulance business is in the public interest and that the applicant is able to perform such services, and to operate in compliance with Montana law and the provisions of this chapter.

C. If the city council finds another ambulance business to be in the public interest and that the applicant is able to perform such services in compliance with Montana law and the provisions of this chapter, the city council shall authorize the issuance of a license to the new applicant. If the city council does not find an additional ambulance business to be in the public interest or that the applicant is unable to perform such services in compliance with Montana law or the provisions of this chapter, the application shall be denied. (Ord. 3399 §4, 2009)

5.45.050 Standards for license. An ambulance business shall meet all applicable standards and requirements of Montana state law, Title 50, Chapter 6, M.C.A. and Title 37, Chapter 104, A.R.M. It shall be unlawful for anyone to operate an ambulance business within the city if the ambulance business is not in compliance with the provisions of Montana state law and this chapter. (Ord. 3399 §5, 2009)

5.45.060 Performance Contract Required

A. No person shall engage in the ambulance business without entering into an ambulance service performance contract with the city as provided in this chapter.

B. Any ambulance business operating within the city as of the effective date of this ordinance shall have a period of one hundred twenty (120) days to meet the requirements of this chapter. If an existing ambulance business does not fulfill the requirements of this chapter, the city reserves the right to solicit competitive bids for another ambulance service provider in accordance with Montana state law.

C. The performance contract shall be non-transferable.

D. The performance contract may contain operating and reporting requirements, performance criteria, penalties for violations of the agreement, and other provisions as deemed appropriate by the city.

E. The performance contract shall contain provisions, such as a performance bond requirement, designed to assure continuity of ambulance services in the event of default or breach of contract by the ambulance business and any subsequent suspension or termination by the city.

F. Pursuant to the statutory duties of the mayor to administer the affairs of city government, supervise the discharge of official duty by city employees and carry out the policies established by the city council, the mayor

shall be responsible for administering the performance contract, except for those policy function determinations expressly reserved to the city council within the provisions of the performance contract.

G. In the event ambulance services within the city are terminated, either voluntarily by a contracted ambulance business or by city council action, the mayor shall take such action as he/she determines is necessary for the continued provision of ambulance services. Emergency action taken by the mayor must be ratified and approved by the city council within 30 calendar days to remain valid. (Ord. 3399 §6, 2009)

5.45.070 Suspension of License and Performance Contract. The city council may suspend a license and the performance contract if it finds that the ambulance business has:

A. Violated state law, city ordinance, or the terms of the ambulance performance contract; and,

B. Failed or refused to remedy or correct the violation in accordance with the provisions of the ambulance performance contract. (Ord. 3399 §7, 2009)

5.45.080 Notice and Hearing Required for Cancellation and Termination.

A. The city council shall not cancel a license or terminate the performance contract without:

1. First having given the ambulance business reasonable opportunity to correct any breach or deficiency as provided for in the performance contract.

2. Delivery to the ambulance business a written statement of the grounds for termination and the charge involved.

3. An opportunity for the ambulance business to answer questions before the city council in a public meeting and demonstrate why they think the agreement should not be terminated. (Ord. 3399 §8, 2009)

5.45.090 Exemptions. The provisions and requirements of this article shall not apply to:

A. The fire department of the city;

B. Any ambulance service operating outside the city that in the course of providing such services, transports a patient from outside the city into or through the city;

C. Any ambulance service that is providing such services under a mutual or automatic aid agreement with the city;

D. Nonemergency transport service provided by a hospital as defined in Montana state law, Section 50‑5‑101, M.C.A. that transports its admitted patients to another hospital building wholly owned by that hospital;

E. Air ambulance services provided by a hospital as defined in Montana state law, Section 50‑5‑101, M.C.A. (Ord. 3399 §9, 2009)

5.45.100 Violation and Penalty. Any person who operates an ambulance business within the city without a city license and without entering into a performance contract with the city in accordance with the provisions of this chapter, shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined up to five hundred dollars for each offense. Each day an offense exists shall constitute a separate and distinct offense. There shall be no imprisonment as a penalty for a violation of this chapter. (Ord. 3399 §10, 2009)

Chapter 5.48

GAMBLING

Sections:

5.48.010 Permissible hours.
5.48.020 Zoning authority to prohibit gambling in certain areas.

5.48.010 Permissible hours. It shall be permissible for gambling establishments to be operated twenty-four hours per day and for video draw poker and video keno and video bingo gaming machines to be operated twenty-four hours per day. (Ord. 2708 §2, 1989).

5 48.020 Zoning authority to prohibit gambling in certain areas. The city is empowered pursuant to Montana state law to enact an ordinance or resolution to zone certain areas within its incorporated limits in which gambling is prohibited. (Ord. 2708 §3, 1989).

Chapter 5.52

LIQUOR

Sections:

5.52.010 Hours of sale.
5.52.020 Zoning restrictions.
5.52.030 License--Required--Fee.
5.52.040 License--Application--Information required.
5.52.050 License--Posting requirement.
5.52.060 License--Expiration date.
5.52.070 License--Transfer.
5.52.080 License--Additional.

5.52.010 Hours of sale. No liquor, beer, or wine shall be sold, offered for sale, or given away upon any premises licensed to sell such alcoholic beverages during the following hours: on any day between 2:00 a.m. and 8:00 a.m. (Ord. 2047 §1, 1979).

5.52.020 Zoning restrictions. The sale of liquor, beer, and wine within the city is restricted to the following zoning designations:

A. On-premises consumption of beer and/or wine CLB-1;

B. On-premises consumption of liquor - CLB;

C. Sale of wine, beer and liquor at establishments located in A, B, RR-I, R-I, R-II, R-III, R-IV and R-V, residential districts, and BN neighborhood business districts and BC restricted commercial districts, sale of beer and/or wine at the neighborhood grocery stores shall be conducted between the hours of eight a.m. and twelve p.m. only. (Ord. 2276 5§1, 3, 1982: Ord. 2125, 1980: Ord. 2047 §2, 1979).

5.52.030 License—Required—Fee.
The City Council shall establish and amend fees relating to license to sell liquor, beer and/or wine by resolution after conducting a public hearing.

Any person desiring to sell liquor, beer, and/or wine in the city shall, in addition to obtaining a license from the Montana State Department of Revenue, obtain a City liquor license The fee for the issuance of a new license subsequent to the first day of the current year for which such license may be issued shall be prorated on a semiannual basis.

(Ord. 3524, 2014; Ord. 3500, 2013; Ord. 3477, 2012; Ord. 3461, 2011; Ord. 3434 §9, 2010; Ord. 3383 §9, 2008; Ord. 3351 §9, 2007; Ord. 3322 §9, 2006; Ord. 3299 §9, 2005; Ord. 3258 §p, 2004; Ord. 3229, 2003; Ord. 2047 §3, 1979).

5.52.040 License--Application--Information required.

A. Any person desiring to purchase the license required by this chapter shall submit to the city treasurer an application for the license, accompanied by the license fee set forth in Section 5.52.030 and a copy of the license issued by the state.
B. The application for license and the license itself shall set forth the following information:
   1. Name of the person to whom issued;

2. The location, by street and number or other specific description of location if no street address exists, of the premises where the business is to be carried on under the license;
3. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license;
4. If applicant is agent, the application must be accompanied by the principal's acknowledgment of the agency.

C. It is the duty of the city treasurer to issue a license upon presentation of a properly completed application together with tender of the appropriate license fee, unless inspection by the city health officer, sanitary inspector, fire inspector, zoning officer, building inspector, or police officer indicates a violation of any city ordinance or code existing at the place of business sought to be licensed; in which case the inspector or officer shall submit a written description of the violation specifying the steps necessary to qualify the premises for a license, a copy of which shall be furnished to the applicant.

D. Sidewalk cafés with dining as well as consumption of alcohol on a public sidewalk in conjunction with sidewalk café dining are subject to the provisions of Chapter 12.18 Missoula Municipal Code.

(Ord. 3543, 2015; Ord. 2047 §4, 1979).

5.52.050 License - - Posting requirement. Every license issued under this chapter must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any peace officer of the city. (Ord. 2047 §5, 1979).

5.52.060 License - - Expiration date. Every license issued under this chapter shall expire on the thirty - first day of January at midnight. No licensee under this chapter shall be entitled to a refund of any portion of the license fee in the event of his discontinuing the business, or the suspension or revocation of his license, prior to the normal expiration date.

(Ord. 3375, 2008; Ord. 2047 §6, 1979)

5.52.070 License - - Transfer. The transfer of any license issued by the city under this chapter will be made by the city treasurer upon application signed by the applicant for the transfer accompanied by evidence of approval of the transfer of the license by the department of revenue to the named business. Provided, however, that the city treasurer shall not issue a license in the name of the transferee until he/she has determined pursuant to subsection C of Section 5.52.040 that no violations of the city code exist at the place of business sought to be licensed under the transfer. (Ord. 2047 §7, 1979).

5.52.080 License - - Additional. The license required by this chapter shall be in addition to the city business li- cense required by Chapter 5.04. (Ord. 2047 §8, 1979).

Chapter 5.56

STREET VENDORS

Sections:

5.56.010 Defined.
5.56.020 License requirement.
5.56.030 Permit requirement.
5.56.035 Parking.
5.56.040 Compliance with health and safety regulations.
5.56.050 Location of street vending operations.
5.56.060 Vending facilities.
5.56.070 Grievance procedure.

5.56.010 Defined.

A. "Transient Vendor" is any person engaged or employed in the business of selling to consumers whether or not for profit by going from consumer to consumer, either on the streets or to their places of residence or employment and soliciting, selling or taking orders for future delivery of any goods, wares or merchandise, which includes any or every person, firm or corporation**,** acting for himself or itself or representing any other person, firm or corporation, who or which brings onto temporary premises within the city a stock of goods, wares, or merchandise, notions or other articles of trade, other than farm, orchard, vineyard or garden products, and who or which solicits, sells or offers to sell or exhibits for sale such stock of goods, wares or merchandise, notions or other articles of trade at retail. This definition

applies to persons vending food or other merchandise from pushcarts, vehicles, trailers, or other readily mobile sources to customers within the City limits. This all-inclusive definition applies to vendors coming into the City of Missoula to provide any type of service (e.g. painters, contractors, tree trimmers, computer technicians, etc.), to residents within the City limits. Nothing contained in this subsection shall apply to duly constituted city markets when and if operated by authority of the city.

"Transient Merchant" means any person, firm or corporation acting for himself or representing any other person, firm or corporation who or which brings into temporary premises into the city any goods, ware, merchandise, notions or other articles of trade, other than farm, orchard, vineyard or garden products and who or which solicits, sells or offers to sell or exhibits for sale such stock of goods, wares, merchandise, notions or other articles of trade at wholesale A transient merchant can operate out of temporary premises for a period of ninety (90) calendar days in any 12 month period.

B. Persons operating small motor vehicles primarily in residential neighborhoods which are constantly in movement except when stopped to make sales shall not be considered street vendors for purposes of this chapter. (Ord. 3342 §3, 2007; Ord. 2206 §1, 19.81: Ord. 2161 §1, 1980).

5.56.020 License requirement.

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A. Except as provided in subsection C of this section, each individual engaging in transient vendor type business within the City must first obtain a transient vendor/merchant license must be obtained prior to soliciting any customer or offering any goods or products for sale. The cost shall be determined in accordance with Chapter 5.08.

The short-term license shall be good for one week from the date of issuance. The long term license is good from the issue date through May 31 of the same licensing year.

B. Except as provided in subsection C of this section, each individual engaging in transient merchant type business within the City must first obtain a transient merchant license must be obtained prior to soliciting any customer or offering any goods or products for sale. The cost shall be determined in accordance with Chapter 5.08.

The license is only valid for a period of ninety (90) calendar days in any twelve month period.

C. Any street vendor who is already licensed under Chapter 5.08 to conduct business in the city at a permanent location shall not be required to obtain a separate business license for the street vending operation.

D. A nonpermanent street vendor stand may be used by a licensed business with no additional license requirement if the stand is adjacent to the building in which the existing licensed business is located. Such street vendor must conform in all respects with the remainder of the street vendor ordinance. (Ord. 3342§4, 2007; Ord. 2813 §1, 1992: Ord. 2206 § 1, 1981: Ord. 2161 §2, 1980).

5.56.030 Permit requirement. Street vendors selling food or drink shall be required to obtain any permit or approval from the city‑ county health department which that department deems necessary.

Street vendors setting up in City of Missoula municipal parks shall be required to obtain any permit or approval from the City of Missoula Parks Department which that department deems necessary. (Ord. 3342 §5, 2007; Ord. 2813 §2, 1992: Ord. 2290 §1, 1982: Ord. 2206 §3, 1981: Ord. 2161 §3, 1980).

5.56.035 Parking. Street vendors setting up in the Central Business District will be allowed to park on the street utilizing the parking meters for a maximum of thirty (30) minutes for set up and removal of display and goods. The Street Vendor will be required to utilize an off street parking facility after the thirty minutes (30) for set up and removal. The Parking Commission will have the right to ticket or remove the vehicle in violation of this requirement as deemed necessary pursuant to written policies and procedures adopted by the Missoula Parking Commission. (Ord. 3342 §6, 2007)

5.56.040 Compliance with health and safety regulations. All business license applicants shall comply with health and safety regulations enacted by the city, county, and the state. The operation of any street vendor shall be subject to immediate shutdown by the health department in the event of a violation of such regulations, and the health department shall be empowered to suspend any of its permits already issued until the violation is corrected. (Ord. 2813 §3, 1992: Ord. 2206 §5, 1981: Ord. 2161 §5, 1980).

5.56.050 Location of street vending operations.

A. Street vending operations conducted on public rights-of-way shall be subject to the following rules:

1. Street vending in the public right-of-way shall be permitted only in areas zoned "CBD" Central Business District and only at locations where the street vendor does not obstruct visibility of motorists at street, alley or driveway intersections;

2. When street vending facilities are located in parking spaces next to sidewalks, patrons shall be served only upon the sidewalk, vending out of parking spaces is not permitted in the CBD (Central Business District) unless permit is granted by the Parking Commission pursuant to their written policies and procedures to allow vending out of parking space in the CBD;

3. Unless an exemption is granted by the parking commission director pursuant to subdivision 7 of this section, street vending operations shall not be located within fifteen feet (15') of any fire hydrant, shall not block ingress or egress into any building and shall be conducted only upon sidewalks and shall not be situated in such manner as to leave less than six feet of clear area on the sidewalk, measured perpendicularly from edge of curb and/or any other obstruction thereof, free for the passage of pedestrians;

4. Except in the case of street vending operations conducted by businesses adjacent thereto, no street vendor shall locate any apparatus closer than ten feet to a door or in front of a window display of any structure, without permission of property owner (5.56.050 section C); a window display is considered any display of goods by a retail business;

5. No street vending operations shall be conducted within fifteen feet of a fire hydrant;

6. A five-pound ABC Fire Extinguisher is required if a heating or cooking appliance is used by the street vendor;

7. The director of the parking commission shall have power to grant exemptions to street vendors from ordinances and rules governing overtime parking. Exemptions shall be issued only to the business license applicant, shall be limited to two parking spaces, and shall be nontransferable. Exemptions shall be effective only between eight a.m. and nine p.m. and shall be effective only for the duration of the permit. Any exemptions granted by the parking commission shall be noted on a certificate of exemptions issued pursuant to written policies and procedures adopted by the Parking Commission; The Parking Commission will have the right to ticket or remove the vehicle in violation of this requirement as deemed necessary by the Parking Commission.

8. Street vending facilities shall be removed from the public right-of-way when not in use and must be removed no later than nine p.m. each day.

9. During the hours of operation of any city approved farmers market or street market operation, no street vending operations on public property or public right-of-way may conduct business along or between blocks of Railroad Street (100W to 200E), Alder Street (100 W), Spruce Street (100E), Pine Street (100W to 200E), Higgins Ave (300N to 500N) and Pattee Street (300N to 500N) and as specified in the resolution creating the farmers or street market unless operating as part of a city approved street market operation. Further, participating members of the street market must keep their vending operations within the city council approved boundaries of the street market during the operating hours of the street market. Except that this provision is not intended to affect any licensed business selling from a stand adjacent to their licensed business location.

B. Street vending operations conducted on parking lots shall be subject to the following rules:

1. Street vending shall be permitted only in commercial and industrial zones; provided, that persons conducting rummage sales and garage sales shall not be considered street vendors for purposes of this chapter;

2. Parking lots upon which street vending operations are conducted must be in compliance with the terms of Ordinance No. 1894, or its successor, with respect to the business or concern served by such lots.

No street vendor shall conduct a street vending operation on any parking lot which does not comply;

Street vending facilities shall be located at least fifteen feet away from any traffic or fire lane in a parking lot. Street vending operations shall be situated so as to minimize pedestrian traffic across any such lanes.

C. Location of Street Vending and Adjacent Property Owner Requirements; The adjacent owner or tenant may require the removal of a Street Vendors operation based on any one of the following criteria:

1. The Street Vendor directly competes with any goods, products or foods that the adjacent merchant may have for sale.

2. If window shopping availability is important to the adjacent merchant or retailer, denial of a location may be based on the fact that the Street Vendor operation potentially impairs or impedes the ability of the public to window shop at the location.

3. The adjacent merchant or retailer desires to utilize the public sidewalk area for their own business related purposes, such as for their own sales displays.

4. Any denial may not be based on anything that constitutes a prohibited discriminatory practice pursuant to Montana state law, such as race, creed, religion, color, national origin, age, physical or mental disability, marital status or sex.

5. The Street Vendor will be given one (1) hour to move their operation from the adjacent property per the adjacent property owners' request if the Street Vendor meets the criteria of Section 5.56.050 Subsection C 1-4. (Ord. 3342 §8, 2007; Ord. 3239, 2003; Ord. 2813 §6, 1992; Ord. 2206 §4, 1981; Ord. 2161 §4, 1980).

5.56.060 Vending facilities.

A. Facilities and equipment used by street vendors shall be constructed and used in a safe manner.

B. All facilities and equipment used by street vendors shall be portable. This requirement shall be deemed met if set-up time does not exceed thirty (30) minutes.

C. Size Restriction: Street vendor is limited to seventy five (75) square feet of vending area which includes display of goods, storage of goods and any and all equipment, which includes tables; the street vendor is limited to a maximum of two (2) tables measuring a maximum of thirty (30) square feet of table space for the display of their goods.

D. Signs on self-contained vending units shall be attached to the surface of the unit. Sidewalk signs, as defined by Section 15.64.030 MMC, (Codifier's note: Correct reference should read: 19.90.030 (42)) are not permitted.

E. Street vendors shall keep the area of operation free of debris and shall clean the area thoroughly upon ceasing operations. Street vendors dispensing drink or food items shall provide at least one trash container for use by patrons. (Ord. 3342, 2007; Ord. 2813 §5, 1992; Ord. 2206 §7, 1981; Ord. 2161 §7, 1980)

5.56.070 Grievance procedure. Any person may file a complaint application with the city attorney about any street vendor. The city attorney's office shall review the evidence supplied by the complainant and any other evidence available to determine whether there exists probable cause to believe that the vendor in question has violated any provision of this chapter or any other ordinance or law. At the same time the city attorney's office shall refer the complaint to the Business Licensing Appeal Committee (5.08.130 E). The Business Licensing Appeal Committee shall notify the vendor in writing of the complaint, the nature thereof and the time and place for a hearing thereon. The hearing shall he held after the vendor has received notice of the complaint and has been given a reasonable time to appear and defend. If at the hearing it shall affirmatively appear that the vendor or his business operation in any manner interferes with the use of public or private property by virtue of the vendor's location, size, or method of doing business, the Business Licensing Appeal Committee may impose such conditions or sanctions upon the vendor's existing business license as he deems to be in the public interest, including but not limited to:

A. Ordering the vendor to change locations or to move from place to place more frequently;
B. Temporarily suspend the vendor's business license until the problem is satisfactorily corrected;

C. Attach other reasonable conditions to the vendor's business license.

If the Business Licensing appeal committee feels that matters brought forth by the complaint warrant revocation of the vendor's business license, he shall refer the matter to an appropriate committee of the city council. (Ord. 3342, 2007; Ord. 2813 §6, 1992; Ord. 2206 §4, 1981; Ord. 2161 §4, 1980)

Chapter 5.60 – Repealed (Ord. 3538, 2015)

BICYCLES

Sections:

5.60.010 General provisions - Repealed. (Ord. 3538, 2015)
5.60.020 Licensing inspections - Records - Renewal - Repealed. (Ord. 3538, 2015)
5.60.030 Renewal in case of transfer of ownership – Repealed. (Ord. 3538, 2015)
5.60.040 Licensing by bicycle dealers and licensing promotions – Repealed. (Ord. 3538, 2015)
5.60.050 Destruction of license stickers and serial numbers – Repealed. (Ord. 3538, 2015)
5.60.060 Penalty - Repealed. (Ord. 3538, 2015)
5.60.070 Bicycle and pedestrian advisory board - Repealed. (Ord. 3538, 2015)

Chapter 5.70

OVERSIZE LOAD/HOUSE MOVING

Sections:

5.70.010 License - Required.
5.70.020 License - Generally.
5.70.030 Compliance with state regulations.

5.70.010 License - Required. Any person engaged in the business of moving any oversize load, house or structure into, out of, through, or within the city limits shall first obtain an oversize load/housemover's license, the annual fee of which shall be as determined pursuant to this title. (Ord. 3448, 2010; Ord. 2357 §1, 1983: Ord. 1918, 1978: prior code §5-6).

5.70.020 License - Generally.

A. Any person desiring to obtain such a license shall make application to the City Treasurer and shall accompany such application with an acceptable bond in the sum of twenty-thousand dollars ($20,000), which shall indemnify the City against damages to thoroughfares, and shall also submit a property damage and personal liability insurance policy containing the coverage and policy limits required for building contractors pursuant to this title.

B. Upon presentation of such application, bond and policy or policies, the City Treasurer, in consultation with the Building Official, Public Works Director and City Engineer, shall examine the qualifications and equipment of the applicant and shall either approve, conditionally approve or disapprove the application. In the event the application is approved or conditionally approved, the City Treasurer shall issue the license. Any conditions to which the license may be subject shall be written to the license. In the event the application is disapproved, the City Treasurer shall not issue the license; provided, however, the applicant may within forty five days of the disapproval appeal to the City Council. The City Council may affirm the decision of the Building Official, Public Works Director and City Engineer or modify the decision in any manner. (Ord. 3492, 2013; Ord. 3448, 2010; Ord. 2630 §1, 1988: Ord. 2357 §2, 1983: Ord. 2162 §2, 1980: prior code §5-7).

5.70.030 License - Compliance with state regulations. Each application for an oversize load/housemover's license shall furnish proof of compliance with all state regulations for such moving. (Ord. 3448, 2010; Ord. 2357 §3, 1984: prior code §5-8).

Chapter 5.80

CABLE COMMUNICATIONS SYSTEMS

Sections:

5.80.010 Title.
5.80.020 Purpose and intent.
5.80.030 Definitions.
5.80.040 Granting of franchises.
5.80.050 Construction of franchise.
5.80.060 Franchising procedures.
5.80.070 Systems construction, street work and technical performance standards.
5.80.080 System maintenance.
5.80.090 Tree trimming.
5.80.100 Safety.
5.80.110 Service availability.
5.80.120 System basic capabilities.
5.80.130 Subscriber service.
5.80.140 Equal opportunity, affirmative action and nondiscrimination.
5.80.150 Access services.
5.80.160 Privacy, private property and subscriber lists.
5.80.170 Rates and charges.
5.80.180 Franchise fee.
5.80.190 Indemnification and insurance.
5.80.200 Records and reports.
5.80.210 Unlawful activities.
5.80.220 Parental control device.
5.80.230 Compliance monitoring and enforcement.
5.80.240 Nonenforcement by the city.
5.80.250 Penalties and other corrective measures.
5.80.260 Franchise termination or forfeiture.
5.80.270 Right of intervention.
5.80.280 Legal fees.
5.80.290 Adoption of rules and regulations.
5.80.300 Amendment or modification of this chapter and the franchise.
5.80.310 Severability.
5.80.320 Notices.

5.80.010 Title. This chapter shall be known as the “Missoula cable communications ordinance." (Ord. 2931 §1, 1995) .

5.80.020 Purpose and intent. Title VI (Cable Communications) of the Communications Act of 1934, as amended or added by the Cable Television Consumer Protection and Competition Act of 1992, establishes guidelines for the exercise of federal, state and local authority with respect to the regulation of cable communications systems. The Missoula city council has determined that it is in the public interest and necessary for the promotion of the safety, convenience, comfort, prosperity and general welfare of the residents of the city to regulate cable communications systems within the city. No provision of this chapter is intended to be in conflict with any preemptive provision of federal or state law. Whenever a preemptive provision of federal or state law exists with respect to any provision of this chapter, the federal or state law shall take precedence. (Ord. 2931 §2, 1995).

5.80.030 Definitions. For the purposes of this chapter, and any franchise granted hereunder, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the city and its designees, of the cable communications system to acquire, create, provide and distribute programming not under the franchisee's editorial control, including, but not limited to:

1. "Public access" means access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated programmers, providers or users having editorial

control over their programming;

2. "Educational access" means access where schools are the primary or designated programmers, providers or users having editorial control over their programming; and

3. "Government access" means access where governmental institutions or their assignees are the primary programmers, providers or users having editorial control over their programming; and

4. "PEG access" means public access, educational access and government access, collectively.

"Access channel" means any channel, or portion thereof, designated for access purposes or otherwise made available to facilitate or transmit access programming.

"Access facilities" means the channel capacity, services, facilities, equipment and/or technical components used or useable by PEG access programmers, providers or users.

"Affiliated entity" means any enterprise having ownership or control in common with the franchisee, in whole or in part, including, without limitation, the franchisee's parent corporations and any subsidiaries or affiliates of such parent corporations.

"Cable communications system" or "cable system" or "cable television system" or "CATV system" means a system plant, facilities, equipment, and closed signal transmission paths, including, without limitation, antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, and any and all other conductors, home terminals, converters, remote control units, and all associated equipment or facilities designed and constructed for the purposes of distributing cable services to subscribers and of producing, receiving, amplifying, storing, processing or distributing audio, video, voice, digital, analog, or other forms of electronic or optical signals, whether owned, rented, leased, leased- purchased, or otherwise controlled by or within the responsibility of the franchisee.

"Cable services" means programming, in any combination, provided on the cable system by the franchisee to subscribers.

"Channel" means a radio frequency band, or its technical equivalent on the cable system, discretely identified and capable of carrying at least a standard video channel, which may include combinations of any audio, digital or other non- video signals. "Standard video channel" means a six megahertz (MHz) frequency band, or its technical equivalent on the cable system, before any signal compression.

"City" means the city of Missoula, a municipal corporation of the state of Montana, and all of the territory within its corporate boundaries, as such may change from time to time.

"City council" or "council" means the present governing body of the city or any future board constituting the legislative body of the city.

"Designated access provider" means the entity or entities designated by the city under Section 5.80.150(C).

"Downstream channel" means a channel capable of carrying a signal transmission from a cable communications system headend to remote points, and/or to interconnection points, on said system.

"FCC" means the Federal Communications Commission.

"Franchise" or "franchise agreement" means any authorization granted hereunder in terms of a franchise, fully executed by the city, to construct, operate and maintain a cable communications system in the city.

"Franchisee" or "grantee" means the person, firm or corporation to whom or which a franchise, as hereinabove defined, is granted by the city council under this chapter, and the lawful successor, transferee or assignee of said person, firm or corporation.

"Grantor" means the city of Missoula acting through its council.

"Gross revenues" means any and all compensation, in whatever form, received directly or indirectly by the franchisee, in connection with the operation within the city of its cable communications system, not including any taxes on

services furnished by the franchisee, which taxes are imposed directly on a subscriber or user by a county, state or other governmental unit, and collected by the franchisee for such entity. Gross revenues shall also include amounts earned during any period regardless of whether:

(a) the amounts are paid in cash, in trade or by means of some other benefit to the franchisee or any affiliated entity;
(b) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure;
(c) the amounts are characterized, separately identified or accounted as being for goods, services or fees to be paid to government agencies; and
(d) the amounts are initially recorded by the franchisee or an affiliated entity. Gross revenues shall not be net of:

(i) any operating expense;
(ii) any accrual, including, without limitation, any accrual for commissions; or
(iii) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment.

"Headend" means a franchisee's facility for signal reception and dissemination on its cable communications system, including antennas, satellite dishes, cables, wires, monitors, switchers, modulators, processors, amplifiers, for television signals, equipment for the interconnection of said system with adjacent cable systems and interconnection of any separate networks which are part of franchisee's cable system, and all other related equipment and facilities.

"Institution" means a building or buildings where service may be utilized in connection with business, trade, profession, public agency or service, school or non-profit organization.

"Interactive services" or "two-way services" or "interactive capability" or "two-way capability" means services or capabilities, respectively, provided to subscribers where the subscriber either: (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.

"Interconnect" or "interconnection" means the provision by the franchisee of technical, engineering, physical, financial and all other necessary components to accomplish, complete and adequately maintain a physical linking of the franchisee's cable communications system and cable services or any designated channel or signal pathway thereof, with any other designated cable system or programmer so that cable services of technically adequate quality may be sent to and received from such other systems.

"Leased access channel" means any channel or portion of a channel available for programming for a fee or charge by persons or entities other than the franchisee.

"Parent corporation" means any existing or future corporation with greater than fifty percent ownership or control over the franchisee.

"Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the state and includes any natural person.

"Public way" or "right-of-way" means any street, right-of-way, park, pedestrian or bicycle easement, utility easement or other public place, ground or water for public use that is controlled by the city.

"Street" means the surface of the space above and below any public street, boulevard, avenue, road, parkway, freeway, highway, waterway, court, alley, sidewalk or other public way of any type whatsoever, now or hereafter existing as such within the city, and any easements or other similar means of access to the extent the city has the right to allow a grantee to use them.

"Subscriber" means any person or institution, as defined hereinabove, who is lawfully receiving, for any purpose or reason, any cable service or services provided by a franchisee by means of or in connection with a cable communications system, whether or not a fee is paid for such service.

"Upstream channel" means a channel capable of carrying a transmission to the system headend from remote signal origination points on the cable system or from interconnection points on the cable system. (Ord. 2931 §3, 1995).

5.80.040 Granting of franchises.

A. Authority to Grant Cable Communications Franchises.

1. It is unlawful to engage in or commence construction, operation or maintenance of a cable communications system without a franchise issued under this chapter. The council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain a cable communications system within all or any portion of the city to any person, whether operating under an existing franchise or not, who makes application for authority to furnish a cable communications system which complies with the terms and conditions of this chapter. Provided, that this section shall not be deemed to require the grant of a franchise to any particular person or to prohibit the council from restricting the number of franchisees should it determine such a restriction would be in the public interest. Any franchise or license for the construction, maintenance and operation of cable television systems using the public streets, utility easements, other public right‐of‐ways or places shall conform to the provision of this chapter.

2. The granting of a franchise, or any of the provisions contained herein, shall not be construed to prevent the city from granting any identical or similar franchise to any person other than the franchisee, including rights, privileges or authority similar to or different, from the rights, privileges or authority set forth herein or the franchise award ordinance, in the same or other streets, right‐of‐ways and public places.

3. However, in view of the possibly appreciable difference in the comparative sizes of various cable operations within the city, the city reserves the right, as necessary and appropriate, to lawfully modify or scale down in certain franchise award ordinances issued hereunder certain provisions and requirements of this chapter in recognition of the technical and economic realities of the subject cable operations.

B. Franchise Grant. This chapter itself grants no authority to operate a cable communications system to any person(s). Such grants are made only by the adoption of a separate ordinance awarding a specific franchise to an applicant who has complied with the provisions of this chapter.

C. Nature and Extent of the Grant. Any franchise granted hereunder by the city shall authorize the franchisee, subject to the provisions herein contained:

1. To engage in the business of operating and providing cable communication services and the distribution and sale of such services to subscribers within the city;

2. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such cable, fiber, amplifiers and appliances, attachments, supporting structures and other property as may be necessary and appurtenant to the cable communications system; and, in addition, so to use, operate and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other franchisee franchised or permitted to do business in the city; and

3. To maintain and operate said franchise properties for the reception, origination, collection, transmission, amplification and distribution of electrical or radiant energy.

D. Duration of Franchises.

1. A franchise shall become effective on the thirty‐first day after approval of the franchise agreement or license; provided, that in accordance with Section 5.80.060(C)(2), the franchisee shall have filed, within thirty days after such effective date, a written instrument, addressed to the council, accepting the franchise, together with the insurance policies and bond required by applicable provisions of the franchise agreement granted pursuant to this chapter.

2. A franchise shall terminate upon expiration of the franchise term or duration set forth in the franchise award ordinance, unless sooner terminated pursuant to the provisions of this chapter or the award ordinance.

3. In the event of any holding over after expiration or other termination of any franchise granted hereunder, the franchisee shall pay to the city all fees consistent with the provisions herein as if there had not been such holding over and as if the terms and conditions of the franchise continued in full force and effect. In the event of any such holding over, in direct contravention by franchisee of a final lawful order of the city expressed by resolution,

upon notice, requiring franchisee to cease and desist all operations upon a certain date, then and in that event, the franchisee shall pay to the city, reasonable compensation and damages, as may be awarded by a court of law. (Ord. 2931 §4, 1995).

5.80.050 Construction of franchise.

A. Interpretation. Unless otherwise specifically prescribed herein, the following provisions shall govern the interpretation and construction of franchise.

1. The provisions of this chapter shall be incorporated by reference in any franchise agreement resultant from a franchise award made hereunder.

2. In the event of conflict between the specifications of this chapter and those of a franchise award ordinance issued under this chapter, the specifications of the franchise award ordinance shall take precedence.

3. The franchisee shall have no recourse whatsoever against the city for any loss, costs, expense or damage, arising out of any provision or requirement of a franchise or the lawful enforcement thereof, unless such loss, costs, expense or damage is due to the fault of the city, after reasonable notice and cure period.

4. A franchise does not relieve the franchisee of any requirement of the city or of any ordinance, rule, regulation or specification of the city, including, but not limited to any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets.

5. Any franchise granted shall take priority over any and all other conflicting rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by franchisee, or any successor to any interest of franchisee, of or pertaining to the construction, operation or maintenance of any cable communications system in the city, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the city to the effect that, as between franchisee and the city, and all construction, operation and maintenance by any franchisee of any cable communications system in the city shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever. Nothing in this section of this chapter is intended to, or shall be interpreted as, negating in any way, nor or in the future, the first amendment rights of a franchisee.

B. Limitations Upon Grant.

1. No privilege or exemption is granted or conferred by a franchise except those specifically prescribed herein.

2. Any privilege claimed under a franchise by the franchisee in any street, right-of-way, or other public place shall be subordinate to the public use and any other lawful use, including prior occupancy, thereof. No franchise shall authorize use of any public property other than public streets, rights-of-way, and public utility easements owned by the city unless such franchise or subsequent resolution of the council expressly authorizes such other public property. The city reserves the right to reasonably designate where a franchisee's facilities are to be placed within the public ways.

3. The franchisee, shall at all times during the life of its franchise, be subject to the lawful exercise of the city's police power and such reasonable regulations as the council may subsequently promulgate thereunder.

4. The franchisee shall be subject to all provisions of the other ordinances, rules, regulations and other provisions of the city heretofore or hereafter adopted, including but not limited to those pertaining to works and activities in, on, over, under and about public rights-of way, so long as such ordinances, rules, regulations and other provisions of the city do not unreasonably interfere with or conflict with specific provisions of the franchise.

5. The franchisee shall be subject to the provisions of general laws of the state of Montana or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted pursuant to this chapter, including but not limited to those pertaining to works and activities in and about state highways.

6. No franchisee nor any major stockholder of a franchisee shall directly or indirectly use the position as cable franchisee to gain a competitive advantage in the business of selling, leasing, renting, servicing or repairing radio or television sets; provided, that nothing herein shall prevent franchisee from making modifications to the tuner

input circuit of the subscribers' communications transmitters and/or receivers, and the fine tuning of the subscribers' operating controls only, to ensure proper operation under conditions of cable connection at the time of installation, or in repairing receivers and other equipment belonging to other cable operators for use in the conduct of their business.

C. Rights Reserved to City. There is hereby provided and reserved to the city every right and power which is required to be herein reserved or provided by any provision of the city or its ordinances, as amended, and the franchisee by its acceptance of a franchise agrees to be bound thereby and to comply with any action or requirement of the city in its lawful exercise of any such right or power, including but not limited to city eminent domain rights. Private property of any franchisee shall not be taken for public use without just compensation.

1. Neither the granting of a franchise nor any provision thereof shall constitute a waiver or bar to the exercise of any governmental right or power of the city, including regulation of service rates and fees as permitted by law.

2. The council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and/or franchisee's franchise.

3. The city reserves the right to enact reasonable regulations pertaining to any franchise granted pursuant to this chapter which may include, but is not limited to: a. Construction and use of poles; b. Use of poles and conduits by the city; c . Common user; d. Filing of pole user agreement; e. Reservation of street rights; f. Restoration of streets; and g. Movement of facilities.

4. The city reserves the right to maintain, or establish and maintain, a cable communications advisory committee to assist the council in regulating cable activity in the city. The members and duties of any such committee, if any, to be as established by the council.

5. The city reserves the right to join with one or more of the other local area city and/or county governments in the formation and operation of an intergovernmental administrative authority for the purpose of joint administration of the cable communications franchises of the various members of the joint authority. The city reserves the right to assign the administration of the provisions of any franchise granted pursuant to this chapter to such a duly established joint authority, and to join with other members of the authority in developing such intergovernmental agreement bylaws, rules and regulations as necessary for the proper administration of the joint authority.

6. The city shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits or other similar facilities erected, controlled or maintained exclusively by or for the franchisee in any street, provided such use by the city does not interfere with the present and future use by the franchisee, and provided that the city shall indemnify the franchisee from all reasonable costs associated with any verified damages that arise as a result of the city's use. The franchisee shall advise the city immediately upon the franchisee's realization of any potential for the incurment of damages by the city from the city's use of the franchisee's facilities under the provisions of this section.

7. Any intra‑ state interconnection of interactive services between the system operated by franchisee and any other system shall be subject to the regulatory authority of the city, pursuant to any franchise awarded under this chapter.

8. The reservation of any particular right shall not be construed to limit the promulgation of any other reasonable rules and regulations. (Ord. 2931 §5, 1995).

5.80.060 Franchising procedures.

A. Franchise Application.

1. Each application for a franchise to construct, operate or maintain any cable communications system(s) in the city shall be filed with the city clerk and shall contain or be accompanied by the following, as a minimum:

a. The name, address and telephone number of the applicant;

b. A detailed statement of the corporate or other business entity organization of the applicant including, but not limited to, the following, and to whatever extent required by the city.

i. The names, residence and business address of all officers, directors and associates of the applicant,

ii. The names, residences and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control of one percent or more of the ownership of the applicant, and the respective ownership share of each person or entity,

iii. The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable television systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby,

iv. A detailed description of all previous experience of the applicant in providing cable television communications system service in related or similar fields,

v. A detailed and complete financial statement of the applicant, vi. A statement identifying, by place and date, any and all cable television franchises awarded the applicant, or its parent or subsidiary; the status of said franchises with respect to completion thereof; the total cost of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;

c. A thorough, detailed description of the proposed cable communications system and plan of operation of the applicant which shall include, but not be limited to the following:

i. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served,

ii. A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those adopted by the Rules and Regulations of the FCC (contained in Title 47, Subpart K, Sections 76.601 et seq. 9), and as augmented herein and modified by the franchise awarded,

iii. A detailed estimate of the cost of constructing the applicant's proposed system,

iv. A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber,

v. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm or corporation, including, but not limited to, public utilities which materially relate or pertain to or depend upon the application and the granting of the franchise,

vi. A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges;

d. A copy of any agreement existing between the applicant and any public utility subject to regulation by the Montana Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to poles, lines or conduits, within the city and/or adjacent areas;

e. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the council, or by any provision of any other ordinance of the city;

f. An application fee in a sum to be set by the city which shall be in the form of cash, certified or cashier's check, money order, to pay the costs of studying, investigating and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part, except to the extent that such fee exceeds the actual costs incurred by the city in studying, investigating and otherwise processing the application; provided, that any applicant who shall deliver to the city clerk a written withdrawal of or cancellation of any application following the date such application is received by the city clerk, shall be entitled to have returned and refunded the sum of fifty percent of the fee less any actual costs or expenses incurred by the city by reason of such applications.

2. The council may, by advertisement or otherwise, solicit for any other applications for cable communications system franchises, and may determine and fix any date upon, after or before which the same shall be received by the city, or the date before which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such applications.

3. Upon receipt of any application for franchise, the council shall refer the same to the city clerk or cable communications advisory committee, if such exists, who shall prepare a report and make recommendations respecting such application, and cause the same to be completed and filed with the council within one hundred and twenty days.

4. In making any determinations hereunder as to any application, the council shall give due consideration to the character and quality of the service proposed, rates to subscribers, experience, character, background and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitations and requirements, and any other consideration deemed pertinent by the council for safeguarding the interest of the city and the public. The council, in its discretion, shall determine the award of any franchise on the basis of such considerations and without competitive bidding.

5. If the council, after public hearing, shall determine to reject such application, such determination shall be final and conclusive, and the same shall be deemed rejected.

6. If the council shall determine to further consider the application, the following shall be done:

a. The council shall decide and specify the terms and conditions of any franchise to be granted hereunder and as herein provided.

b. The council shall give notice of its intention to consider the granting of such a franchise, stating the names of the proposed franchisee, and that copies of the proposed franchise may be reviewed at the office of the city clerk fixing and setting forth a time and public place certain when and where interested parties may inspect all the bona fide applications, fixing and setting forth a day, hour and place certain when and where any persons having any interest therein or objection to the granting thereof may file written protests and appear before the council and be heard, and directing the city clerk to publish notice of said resolution's adoption at least once within ten days of the passage thereof in a newspaper of general circulation within the city.

7. At the time set for the hearing or at any adjournment thereof, the council shall proceed to hear all written protests. Thereafter, the council shall make one of the following determinations:

a. That such franchise be denied; or

b. That such franchise be granted upon such conditions as the council deems appropriate, which conditions may include, on a not to exceed basis, where in accordance with applicable federal and state regulations and laws:

i. Charges for installation,
ii. Subscriber service rates and fees,
iii. Service rates for separate classifications of service such as additional connections.

8. If the council shall determine that a franchise be denied, such determination shall be expressed by resolution; if the council shall determine that a franchise be granted, such determination shall be expressed by ordinance granting a franchise to the applicant. The action of the council shall be final and conclusive.

9. The franchisee, within thirty days of receipt of written notification by the city following franchise award, upon initial franchise award and any renewal thereof, shall pay to the city a sum of money to reimburse the city for all expenses incurred by the provisions of this chapter regarding the franchise award or renewal process, beyond those defrayed by application fees. The city shall furnish the franchisee a statement of such expenses with the notification.

B. Replacement Franchise.

1. A franchisee's cable service may be required by the city to continue uninterrupted beyond the expiration or termination of the franchise, but not for longer than twenty‑four months thereafter. To assure continued service to the subscribers, the city shall issue a request for proposals, for a replacement franchise, not later than twenty-four months prior to expiration of a franchise. The RFP shall include the minimum acceptable level of system capability, services, access, etc. as determined by the city, to meet the needs and interests of the Missoula community, in accordance with applicable law. If the city deems the franchisee's past performance to warrant consideration for franchise renewal, then the city shall provide the franchisee first right of refusal in accepting the franchise offered. However, if the city deems the franchisee's past performance to not warrant such consideration, or if franchisee elects to not accept the franchise offered under its first right of refusal, then the city may consider other applicants with the understanding that no further consideration will be given to awarding the incumbent franchisee a replacement franchise.

2. The specifications, terms and conditions of this section are not intended, nor should such be construed, to contradict or abrogate the rights and/or privileges of a franchisee under federal or state law, and more specifically Section 626 of Title VI of the Communications Act of 1934 as amended; i.e., the specifications, terms and/or conditions of such federal or state law shall take precedence where such may conflict with the specifications, terms and/or conditions of this section.

3. Franchises will normally not be renewed for periods in excess of ten years, and may be renewed prior to expiration of an existent franchise in accordance with the procedures set forth in subsection B(1) of this section.

4. If the city after public hearing elects to not consider the incumbent franchisee for a replacement franchise, then it shall do so by resolution prior to issuance of an RFP for the replacement franchise. In such an event the city may purchase or require any successor franchisee to purchase franchisee's facilities for a cost not to exceed its fair market value. The fair market value shall be determined pursuant to law.

C. Franchise Acceptance.

1. No franchise granted under this chapter shall become effective for any purpose unless and until written acceptance thereof, together with the bond and insurance policies required by Section 5.80.190, shall have been filed with the city clerk. Written acceptance, which shall be in the form and substance approved by the city attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this chapter, and in such franchise or otherwise specified as herein and therein provided.

2. The written acceptance shall be filed by franchisee within thirty days after the effective date of the ordinance granting such franchise. In the event this day falls on a non‑working day, then the next working day will suffice.

3. In default of the filing of such written acceptance as herein required, the grantee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the grantee shall not be received nor filed by the city clerk. The grantee shall have no rights, remedies or redress in the premises, unless and until the council, by resolution, shall determine that such acceptance be received or filed and then upon such terms and conditions as the council may impose.

4. In any case, and in any instance, all rights, remedies and redress which may or shall be available to the city, shall at all times be available to the city, and shall be preserved and maintained and shall continuously exist in and to the city and shall not be in any manner or means modified, abridged, altered, restricted or impaired by reason of any of these premises or otherwise.

D. Franchise Transfer or Assignment.

1. A franchise awarded under this chapter shall be a privilege to be held in personal trust by the franchisee. The franchise shall not be sublet or assigned, nor shall any rights or privileges therein granted or authorized be leased, assigned, mortgaged, sold, transferred, pledged or disposed of either in whole or in part, either by forced or involuntary sale or by voluntary sale, merger, consolidation or otherwise, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person(s), except the franchisee or a company controlling, controlled by or under common control with the franchisee, either by act of the franchisee or by operation of law, without the consent of the city expressed by ordinance; provided, however, that no

such consent shall be required for any transfer in trust, mortgage or other hypothecation, as a whole, to secure an indebtedness.

2. The franchisee shall promptly notify in writing the city, but not less than ninety days prior to, of any proposed change in or transfer of, or acquisition by, any other party of control of the franchisee with respect to which the consent of the city is required, pursuant to subsection D(1) of this section, providing with such notification a summary explanation of the nature, purpose and terms of the transaction.

3. The franchisee shall, if requested by the city and within thirty days of such request, provide the city attorney a copy of deeds, leases, mortgages, agreements or other written instruments evidencing such transaction, certified as correct by the franchisee. A change in beneficial ownership of ten percent of stock or other interest in the franchisee shall be presumed to be a change in control of the franchisee. Such change of control shall make the franchise subject to revocation unless and until the council have consented thereto.

4. Consent of the council shall not be granted until it has examined the proposed assignee's legal, financial, technical, character and other qualifications to construct, operate and maintain a cable communications system in the city and has afforded all interested parties notice and an opportunity to be heard on the question. The franchisee shall assist the city in any such examination. The city may condition any transfer upon such conditions it deems appropriate.

5. The said consent of the council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility as determined by council and this chapter; and provided, further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation, in whole or in part, to secure an indebtedness.

6. In the event that the franchisee is a corporation, prior approval of the council shall be required where there is an actual change in control or where ownership of more than fifty percent of the voting stock of the franchisee is acquired by a person or group of persons acting in concert, none of whom already own fifty percent or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the council shall constitute a failure to comply with a provision of this chapter within the meaning of Section 5.80.260(B)(1).

7. No transfer for which the city's consent by ordinance is required may occur until the successor or lessee has complied with the requirements of subsection C(1) of this section, including, but not limited to, providing certificates of insurance, unless the city council waives such compliance by resolution.

8. The city shall make a final decision upon a proposed change of control within one hundred and twenty days of receiving a written request for approval of a change in control containing or accompanied by such information as is required by federal law and by the city. If the city fails to render a final decision on the request within one hundred twenty days, then the proposed change shall be deemed to be consented to by the city. At any time during the one hundred twenty‑day period, the city may request in writing that franchisee provide or cause to provide any information reasonably necessary to rendering a final decision on the request. The city and franchisee may, at any time, agree to extend the one hundred twenty-day period.

9. Any such transfer or assignment shall be made by an instrument in writing, which shall include acceptance of all terms and conditions of the franchise, a duly executed copy of which shall be filed with the city clerk within thirty days after any such transfer or assignment.

10. Nothing contained in this section shall be deemed to prohibit the mortgage, pledge or assignment of tangible assets of franchisee's cable system, including but not limited to accounts receivable, inventory or monetary assets, for the purpose of financing acquisition of equipment or for the acquisition, construction and operation of the cable system of franchisee or any affiliated entity, without the city's consent, but any such mortgage, pledge or assignment shall be subject to the city's other rights contained in the franchise. The franchisee may also sell tangible assets of the cable system in the ordinary conduct of its business without the consent of the city.

11. Nothing contained in this section shall be deemed to prohibit franchisee's lease or sublease to other city franchisees any of the rights or privileges granted or authorized by the franchise, with or without the city's consent, so long as franchisee remains solely responsible for locating, servicing, repairing, relocating or removing its system. (Ord. 2931 §6, 1995).

5.80.070 Systems construction, street work and technical performance standards.

A. Standards. Standards of cable communications system(s) design, construction, safety and operation will meet, but not be limited to, all applicable city, state and national/federal codes, rules, regulations and specifications referenced and/or set forth in this chapter and the franchise agreement, including those documents incorporated therein by reference.

B. Compatibility. All cable communications systems authorized to be constructed and/or operated pursuant to this chapter shall be, insofar as financially and technically feasible, compatible one with another.

C. General Construction.

1. The franchisee may perform all construction necessary for the operation of its cable system, subject to applicable regulations of the city. All construction and maintenance of any and all facilities within the streets and public ways incident to the franchisee's cable system shall, regardless of who performs the construction, be and remain the franchisee's responsibility.

2. Failure on the part of the franchisee to commence and diligently pursue each of the system construction, extension and/or upgrade requirements, and to complete each of such matters as set forth in the franchisee's franchise agreement, except as otherwise provided for in said franchise agreement, shall be grounds for termination of such franchise. By resolution and order, the council shall extend the time for the commencement and completion of construction, extension and/or upgrade for additional periods in the event the franchisee, acting in good faith, experiences delays by reason of circumstances beyond his control.

3. The franchisee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different or additional poles, conduits or other facilities whether on public property or on privately owned property unless and until first securing the written approval of the city's Director of Development Services.

4. In all sections of the city where wires, cables and other system appurtenances are mounted above ground, every reasonable effort shall be made to minimize obstruction of the view of residents and every reasonable effort shall be made to preclude an unsightly system installation.

D. Conditions on Street Occupancy.

1. In accordance with subsection E of this section, any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a franchisee shall be done under permits issued for the work by proper officials of the city, and under their supervision and direction, and shall be done in such a manner as to give the least inconvenience to the inhabitants of the city. The franchisee shall, at its own cost and expense, and in a manner approved by the city's director of Development Services, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also make and keep full and complete plats, maps and records, as set forth in subsection L of this section, showing the exact locations of its facilities located within the public streets, ways and easements of the city. These maps shall be available for inspection at any time during normal business hours by city officials.

2. Upon any failure of the franchisee to commence, pursue or complete any work required of it by law or by the provisions of a franchise to be done in any street, the city council, at its option and according to law, after reasonable notice from the city to the franchisee, may cause such work to be done and the franchisee shall pay to the city the cost thereof in the itemized amounts reported by the council to the franchisee, within thirty days after receipt of such itemized report.

3. In the event that any part of such system has been installed in any street or other area without complying with the requirements hereof and/or the franchise agreement; or the use of any part of the system of the franchisee is discontinued for any reason for a continuous period of thirty days, without prior written notice to and approval by the city; or any franchise shall be terminated, canceled or shall expire, then the franchisee shall, at the option of the city, and at the expense of the franchisee and at no expense to the city, upon demand of the city, promptly remove from any streets or other area all property of the franchisee and the franchisee shall promptly restore the street or other area from which such property has been removed to such condition as the city director of Development Services shall approve.

4. The franchisee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than ten calendar days advance written notice of any requested arrangement for such temporary wire changes.

5. Whenever in the judgment of the city it is deemed impracticable to permit erection of poles or construction of underground conduit system by any utility which may at the time have authority to construct or maintain a conduit or poles in street area, the city may require the franchisee to afford to such utility the right to use such poles or facilities of the franchisee as the city finds practicable in common with the franchisee, both as they may agree upon, so long as the use of such poles or facilities do not interfere with the franchisee's present and future use of such poles or facilities.

E. Permits. The franchisee shall apply for and obtain all permits necessary or construction or installation of any facilities, and for excavating and laying any facilities, within the streets and public ways, and shall pay all applicable fees upon issuance of the requisite construction permits by the city to the franchisee. In the event that emergency repairs are necessary, the franchisee shall immediately notify the city of the need for such repairs. The franchisee may initiate such emergency repairs, and shall apply for appropriate permits within forty‐ eight hours after discovery of the emergency. The franchisee shall comply with all applicable city regulations relating to such excavations or construction, including the payment of permit or license fees.

F. Excavations.

1. The franchisee may make excavations in the streets and public ways for any facility needed for the maintenance or extension of the franchisee's cable system. The franchisee's cable system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of the city, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the streets by or under the city's authority. Prior to doing such work, the franchisee shall apply for, and obtain, appropriate permits from the city and give appropriate notices to any other franchisees, licensees or permittees of the city, or departments of the city, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation. Within forty‐ eight hours after any city department or any city franchisee, licensee or permittee notifies the franchisee of a proposed street excavation, the franchisee shall: mark all of its locatable underground facilities within the area of proposed excavation; notify the excavator of any locatable underground facilities in the area of the proposed excavation; or, notify the excavator that the franchisee does not have any underground facilities in the vicinity of the proposed excavation. All of the franchisee's work under this section shall be done in strict compliance with all rules, regulations and ordinances of the city, including the proper safeguarding of excavations for the prevention of accidents.

2. Nothing in the franchise shall prevent the city from constructing sewers; grading, paving, repairing and/or altering any street or public way; laying down, repairing or removing water mains; or, constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the franchisee's cable system. However, if any of the franchisee's system interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the franchisee's system shall be removed or replaced in accordance with the provisions of subsection I of this section.

G. Underground Facilities.

1. Unless otherwise authorized by council, in those areas and portions of the city where the transmission and/or distribution facilities of the public utility providing telephone service, and those of the utility providing electric service, are underground or hereafter are placed underground, or are to be placed underground by a builder, developer or subdivider as part of a development or subdivision, then the franchisee shall likewise construct, operate and maintain all its transmission and distribution facilities underground to the maximum extent that existing technology permits the franchisee to do so.

2. Underground cable will be enclosed in conduit when installed under the pavement of the street, under the sidewalk, or other paved areas; and, when installed in the nature strip, normally a minimum of six feet from the curb away from the street. Variations from this procedure must be approved by the city's director of Development Services prior to initiation, and on a case by case basis.

3. In any new developments or subdivisions, the franchisee shall install required equipment to provide future service. The developer shall be required to give the franchisee reasonable notice of any construction or development, including a copy of any final plan, and of the particular date in which open trenching or other facilities shall be available for franchisee's installation of conduit or cable. Trench costs shall be borne by the developer, who shall be responsible for the opening and closing of such trenches. The franchisee will provide cable and active equipment. Upon request, the franchisee shall also provide specifications to the developer as needed for trenching or other technical data that may be required. The franchisee will be responsible for the conduct of the engineering and labor to put the cable conduit in the trench. If technical equipment, such as pre-wiring or the distribution system is installed by the developer, it is the developer's responsibility that such equipment meets FCC standards. The franchisee will be responsible for pulling in the cable, and providing the plant electronics and drops to individual dwelling units, after occupancy.

4. In those areas and portions of the city where utility service and/or cable communications facilities are currently located underground, the franchisee shall be responsible for the undergrounding of its cable facilities including the performance of all necessary trenching and backfilling of main line and service trenches and furnishing of any imported backfill material required.

5. Previously installed aerial cable shall be undergrounded in concert, and on a cost-sharing basis, with utilities pursuant to the general ordinances of the city or applicable state law, or in event such action shall be taken by all utilities on a voluntary basis.

6. Incidental appurtenances such as amplifier boxes and pedestal-mounted terminal boxes may be placed above ground, but shall be of such size and design and shall be so located as not to be unsightly or hazardous to the public.

H. Street Restoration. Whenever the franchisee disturbs the surface of any street for any purpose, the franchisee shall promptly restore the street to at least its prior condition. When any opening is made by the franchisee in a hard surface pavement in any street, the franchisee shall promptly refill the opening and restore the surface to a condition satisfactory to the Development Services Director. If the franchisee fails, after reasonable notice by the city, to properly restore a street, the city may have the street repaired, with the cost of such work and repairs paid by the franchisee, including costs of inspection and supervision.

I. Relocation. The city shall have the right to require the franchisee to change the location of any of the franchisee's cable system within the streets when the public convenience requires such change, and the expense thereof shall be paid by the franchisee. Should the franchisee fail to remove or relocate any such facilities by the date established by the city, the city may effect such removal or relocation, and the expense thereof shall be paid by the franchisee, including all costs and expenses incurred by the city due to the franchisee's delay. If the city requires the franchisee to relocate its facilities located within the streets, the city shall make a reasonable effort to provide the franchisee with an alternate location within the streets. The franchisee shall indemnify the city for any damages, claims, additional costs or expenses against or payable by the city arising out of or resulting, directly or indirectly, from the franchisee's failure to remove, adjust or relocate any of its facilities in the streets in a timely manner in accordance with a relocation schedule furnished the franchisee by the Development Services Director in writing, unless the franchisee's failure arises directly from the city's negligence or willful misconduct.

J. System Extension.

1. It is the city's general policy that all dwelling units in the franchisee's service areas should have equivalent service availability from the franchisee's cable system(s) under nondiscriminatory rates and reasonable terms and conditions. The franchisee shall not arbitrarily refuse to provide cable service to any person within its franchise area.

2. The franchisee shall extend residential and institutional service (the latter as set forth in the franchise award ordinance) to individual dwelling units and into every new subdivision and/or development. The capacity to provide cable communications service shall be available to newly constructed structures on the date of first occupancy. Actual installation of service may be delayed up to sixty days from first occupancy or until after final grading, whichever is first. Those new areas having more dwelling units per strand mile of plant than the number stipulated in the franchise agreement, shall receive residential service for the normal installation fee. In those areas where the number of dwelling units per strand mile is less than the number

stipulated in the franchise agreement, the franchisee will provide residential cable service on a pro‑ rata basis, sharing the costs with the potential subscriber s) as determined by a formulation set forth in the franchise award ordinance.

K. Interconnection. The franchisee may be required to provide interconnection to other cable systems serving business and residential areas within the city. This and other possible system interconnections will be provided by franchisee as set forth in the franchise agreement.

L. Schedule and As‑ Builts. Prior to beginning any construction, the franchisee shall provide the city with a construction schedule for work in the streets and/or public ways. When the franchisee's construction of facilities in the streets and public ways is completed, the franchisee shall provide the city, upon request therefrom, with a map showing the location of the installed facility in the streets and public ways, as built.

M. Changes Required by Public Improvement. The franchisee at his expense shall protect, support, temporarily disconnect, relocate or remove any property of the franchisee when required by the council by reason of traffic conditions, public safety, street vacation, freeway or street construction; change or establishment of street grade, installation of sewers, drains, water pipes, power lines, structure or improvements by governmental agencies whether acting in a governmental or proprietary capacity, or any other structure of public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the city shall undertake to cause all such properties to be located beneath the surface of the ground; provided that the franchisee shall in all cases have the privileges and be under the obligations as to the abandonment of franchise property in place which are provided in subsection N of this section.

N. Removal or Abandonment of Franchisee Property.

1. In the event the use of any of the franchisee's property is permanently discontinued, or no franchise has been obtained therefor, upon expiration of or within twelve months after any termination of a franchise, and subject to applicable federal or state law, the franchisee shall promptly remove from the streets all property involved, other than the council may, at its sole option, permit to be abandoned in place.

2. A permit to abandon in place must be obtained from the city's director of Development Services. Nothing hereunder shall be deemed as taking of the property of the franchisee, and the franchisee shall be entitled to no surcharge by reason of anything hereunder.

3. Any property of the franchisee remaining in place one hundred and twenty days after termination or expiration of the franchise shall be considered permanently abandoned. The city's director Development Services may extend such time in thirty‑ day increments not to exceed two such extensions, or a total of one hundred and eighty days.

4. The franchisee's property to be abandoned in place shall be abandoned in such a manner as the council shall prescribe. Upon abandonment of any franchise property in place, the franchisee shall submit to the council an instrument, satisfactory to the city attorney, transferring to the city the ownership of such property.

(Ord. 3492, 2013; Ord. 2931 §7, 1995).

5.80.080 System maintenance.

A. General. Throughout the life of franchise, and in addition to other service regulations adopted by council, and excepting circumstances beyond franchisee's control, such as acts of God, riots and civil disturbances, and in providing the foregoing services, a franchisee shall maintain all parts of its system in good operating condition. The system must serve individual residents, but also serve as a broad based communications source for city government, other public facilities including hospitals, public libraries, schools, and industrial/commercial business users.

B. Quality Control. The franchisee's cable system(s) constructed or erected and operated under the franchise shall be of good quality and workmanship and shall be maintained in good repair and efficiency. The franchisee shall install and maintain its cable system in accordance with the requirements of the National Electric Safety Code, and in such manner that the cable system shall not interfere with any installations of the city or any public utility or telecommunications utility, or any franchisee, licensee or permittee of the city. The city shall have the right to inspect

any construction or installation work performed under the franchise, and to make such tests as it deems necessary to ensure compliance with the terms thereof and the provisions of applicable law, rules and regulations.

C. Corrective Maintenance. The franchisee's corrective maintenance program shall render efficient corrective service, make repairs promptly, and interrupt subscriber service only for good cause and for the shortest possible time. Such interruptions shall be proceeded by notice where practicable and shall occur during a period of minimum use of the system if feasible. A written log shall be maintained of all service interruptions. The log shall reflect the date, time, duration and reason for each service interruption. The record of the log shall be kept on file for a minimum of three years.

D. Proof‐of‐Performance. The franchisee shall comply with FCC Rules and Regulations, Part 76, Subpart K (Technical Standards), now in effect or as may be amended from time to time. The city reserves the right to periodically conduct technical performance and compliance tests and inspections of the franchisee's cable system(s); however, not more frequently than annually unless the city, at its sole discretion, has reason to suspect some noncompliance with the provisions of the franchise. The franchisee shall retain on file at its offices within the city, for a minimum of thirty‐six months immediately following the production thereof, and make available for inspection by the city upon request, copies of all systems proof‐of‐performance tests results, system cumulative leakage index tests results, systems outage logs, customer service complaint logs, and other files as may be necessary to verify compliance with the provisions of the franchise. The franchisee will cooperate with the city in the performance of all such tests and inspections. (Ord. 2931
§8, 1995).

5.80.090 Tree trimming. Upon obtaining a written permit from the city forester, the franchisee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the streets or public ways which interferes with the franchisee's cable system. Except in emergencies, the franchisee may not prune trees at a point below thirty feet above the sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the street or public way in or over which the tree is growing. For purposes of this section, emergencies exist when it is necessary to prune to protect the public from imminent danger. The owner or occupant shall have seven days from receipt of the franchisee's notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, the franchisee may prune such tree at its own expense. The city forester may at his or her discretion, waive the notification or permit process in the case of single trees, if the franchisee adequately demonstrates to the city forester's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by the franchisee shall be subject to the approval of the city forester. The city forester shall have the discretion to cancel the permit if, at any time, the franchisee or its agents, fails to use proper arboricultural practices. (Ord. 2931 §9, 1995).

5.80.100 Safety. The franchisee shall provide and put in use such equipment and appliances as shall control on a closed circuit basis and effectually carry all electric currents and the franchisee's television and other system signal impulses in a manner so as to prevent injury to the wires, structures and property belonging to the city or to any person within the city. The franchisee shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for keeping and maintaining in a safe, suitable, substantial condition and in good order and repair, all its structures, lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the city wherever situated or located so as to prevent failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of the franchisee. The franchisee, at its own expense, shall repair, renew, change and improve its cable system from time to time as may be necessary to accomplish these purposes. (Ord. 2931 §10, 1995).

5.80.110 Service availability. After the franchisee shall have established service pursuant to a franchise in any area of the city, service to such area shall not be suspended or abandoned unless such suspension or abandonment be authorized or ordered by council, provided such authorization or order is not to be unreasonably withheld. (Ord. 2931 §11, 1995).

5.80.120 System basic capabilities.

A. Minimum Capacity and Capability. The system should have a minimum capacity of downstream video channels as set forth in the franchise award ordinance, and have two‐way operational capability, the latter to be activated on a selective basis when technically and economically feasible, or as otherwise mutually agreed upon by the city and the franchisee.

B. Emergency Override. The franchisee may, in its franchise agreement, be required to design, construct and maintain the system in manner to provide for restricted audio and/or video override of all video channels during emergencies. If an override capability is stipulated in the franchise agreement, the system shall include a squeal alert tone to precede the verbal and/or video messages. If a video override capability is provided, the system shall include a character generator for delivery of emergency messages to the communicatively handicapped.

C. Emergency Power. Emergency power sources shall be provided at the headend, network distribution center, satellite earth station, processing hubs and other system locations as may be necessary to guarantee that in the event of a power failure on any part of the system, service will be maintained on the rest of the system. (Ord. 2931 §12, 1995).

5.80.130 Subscriber service.

A. Business Office. The franchisee shall maintain a conveniently located business office and service center within the city with toll free telephone numbers so that subscribers may report service outages or deficiencies at any time. The office shall maintain an adequate staff such that subscribers may transact all necessary business, including payment of bills, during regular business hours. The franchisee's employees shall maintain a high standard of courtesy in customer relations at all times.

B. Continuity of Service. In the event the franchisee elects to rebuild, upgrade, modify or sell the system, or the city revokes or fails to renew the franchise, the franchisee shall take all reasonable efforts to ensure that all subscribers receive continuous, uninterrupted service in accordance with the provisions of this chapter and the franchise agreement. (Ord. 2931 §13, 1995).

5.80.140 Equal opportunity, affirmative action and nondiscrimination.

A. Equal Employment Opportunity. Throughout the term of the franchise, the franchisee shall fully comply with the equal employment opportunity requirements of federal, state and local law, including FCC rules and regulations relating thereto. Upon request by the city, the franchisee shall furnish the city a copy of the franchisee's annual statistical report filed with the FCC, along with proof of the franchisee's annual certification of compliance. The franchisee shall immediately notify the city in the event the franchisee is at any time determined not to be in compliance with FCC rules or regulations.

B. Affirmative Action. The franchisee shall carry out its equal employment policy by making a determined and good‐faith effort at affirmative action to employ and advance in employment women, minorities and the physically and mentally handicapped.

C. Nondiscrimination. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the franchisee are honored. The franchisee shall not deny cable service, or otherwise discriminate against subscribers, programmers or any other persons on the basis of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability or geographical location. Neither the city nor the franchisee shall, as to rates, charges, service, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to prejudice or disadvantage. The franchisee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to nondiscrimination. (Ord. 2931 §14, 1995).

5.80.150 Access services.

A. Access Authority. The franchisee shall provide the city public, educational and government (PEG) access support and services, and leased access services, in accordance with public law, the provisions of this section and the franchise award ordinance.

B. Shared Usage. The city agrees to share the use of the franchisee's existing PEG access channels insofar as reasonably possible; however, reserves the right to require dedicated and additional PEG access channels and facilities as specified herein below.

C. Access Programming Providers. The city may designate PEG access providers, including itself for government access purposes, to control and manage the use of any or all access facilities and channels provided by the franchisee under the franchise, including responsibility for operating and managing such access facilities and channels. The franchisee shall cooperate with the designated PEG access providers in the use of the access facilities and channels

for the provision of PEG access. A nonprofit corporation or other agency may be used for the purpose, inter alia, of promoting and administering all public access channels except as may be preempted by the city council, state or federal authorities. Subject to the approval of the city, the franchisee shall enter into such operating agreements with the designated PEG access providers as may be necessary to facilitate, support and coordinate the provision of PEG access; provided, that all such operating agreements shall not be inconsistent with the terms of the franchise.

D. Signal Quality Control. The franchisee shall provide, install, operate, maintain and replace plant, including headend equipment as necessary to ensure that the cable system will adequately support any and all cable access applications, including two‐way communications, required by the franchise. The franchisee shall maintain all upstream and downstream access channels and interconnections of access channels at the same level of technical quality and reliability required by the franchise, and all other applicable laws, rules and regulations, for residential subscriber channels. In the event the franchisee makes any change in the cable system and related equipment and facilities or in the franchisee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of access programming, the franchisee shall at its own expense take necessary technical steps or provide necessary assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of access providers or other users are not diminished or adversely affected by such change.

E. Schools. All public and private schools and colleges within the city area served by the franchisee's system s) with an enrollment of fifty or more students, will be provided free basic connection with up to three drops and up to three outlets per drop and free basic service, at the highest basic (non‐premium) tier level, for education purposes, except, however, such users shall be responsible for converters in the same manner as subscribers. Chosen drop locations should be at reasonably accessible locations. Any additional drops and outlets will be paid for by the user on a time and materials cost basis. The school will provide whatever easements may be necessary for the franchisee to provide such service.

F. Remote Origination. The franchisee shall provide for PEG access usage, within ninety days following written request by the city, hardwired programming origination points, upstream and downstream access channel(s) capacity, and requisite headend switching capability for activation and support of the remote origination needs of PEG users. Such installations and capabilities to be provided by the franchisee on an actual installation time and materials costs basis, to be defrayed by the requesting organization or agency, with no allocation of costs for previously activated upstream plant. The franchisee shall provide a good faith estimate of costs in a timely manner.

G. Good Faith Negotiation of Future Support. When requested by the city, pursuant to the determination by the city council of a bona fide community need for public, educational and/or government access services or facilities above and beyond those set forth in the franchise agreement, the franchisee shall meet and negotiate in good faith with the city, the provision and support of such cable related access need or interest, in full compliance with the specifications and intent of the Federal Cable Franchise Policy and Communications Act of 1984, as set forth in that Act and the House Committee on Energy and Commerce Report, No. 98‐934, on that Act, and the Federal Cable Television Consumer Protection and Competition Act of 1992. The city shall not be unreasonable in its determination of such access needs and interests, and the city's determination shall include consideration of the cost to the franchisee for such provision and support, in accordance with the pertinent provisions of the Cable Acts of 1984 and 1992. Therefore, the council in determination of such needs and interests, shall hold a well noticed public hearing to determine whether an access service or facility is required to satisfy any particular cable‐related need or interest of the community. The franchisee shall be provided full opportunity to present factual showings regarding its position as to the need for such service or facility, and any other relevant information, including the potential impact of the cost associated with the provision of same.

H. Indemnification. PEG access users shall utilize the system at their own risk, and shall indemnify the franchisee against any claims arising from their usage of systems capacity for access applications, with the exception of such claims as may arise from damages attributable to fault, oversight, omission, etc., associated with the franchisee's responsibilities under the franchise.

I. Access Programming Placement. All downstream PEG access channels provided residential subscribers under the franchise shall be included by the franchisee, without limitation, as a part of each and every tier, subtier, package, combination or other grouping of the franchisee's basic cable service.

J. Leased Access. The franchisee shall meet the leased access channels requirements imposed by federal law at reasonable rates. (Ord. 2931 §15, 1995).

5.80.160 Privacy, private property and subscriber lists.

A. Privacy. A franchisee shall not violate any subscriber's privacy rights that exist pursuant to either federal or Montana law. The franchisee and the city shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any subscriber, programmer or any other person resulting from any personnel action, device or signal associated with the cable system. The franchisee shall not place in the residence, building, structure or any facility of any subscriber any equipment capable of two-way communications without the written consent of the subscriber and residents, revocable at the discretion of the subscriber and residents, and shall not use the two-way communications capability of the system for unauthorized or illegal subscriber surveillance of any kind. For purposes of this section, tenants who occupy premises shall be deemed to be subscribers, regardless of who actually pays for the service. Written consent, as required herein, shall not be required of any subscriber by the franchisee as condition of receiving cable services.

B. Private Property. The franchisee shall not install or attach any of its facilities to any residence or other property without first securing the written permission of the owner or tenant of any property involved, except where there is an existing utility easement reserved by the plat or other conveyance. Nothing herein, however, shall excuse the franchisee from obtaining permission from anyone who has the right to approve or disapprove the attachment. If such permission or easement is later revoked, whether by the original or a subsequent owner or tenant, the franchisee, on the owner's request, shall promptly remove its facilities and promptly restore the property to its original condition. The franchisee shall perform all such installations and removals in workmanship-like manner and shall be responsible for any damage to residences or other property caused by the installation or the removal.

C. Subscriber Lists. The franchisee shall not sell, or otherwise make available, lists of the names, addresses and/or telephone numbers of its subscribers, or any list which identifies the viewing habits by the name of any subscriber, or any personalized data pertaining to a subscriber's use of any of the franchisee's cable services by the name of any subscriber, without the written, expressed consent of the subscriber to which the personalized data pertains, except as otherwise expressly authorized by federal law. For purposes of this section, "personalized data" means the name and address or other information regarding an individual subscriber, which is associated with or extracted from data obtained from the subscriber's use of the franchisee's cable service. The franchisee shall be subject to the provisions of federal, state and local law regarding the limitations on the franchisee's collection and use of personally identifiable information, and other issues involving the protection of subscriber privacy. (Ord. 2931 §16, 1995).

5.80.170 Rates and charges.

A. Authority. Subject to any applicable federal or state or local law, the franchisee shall charge its subscribers and users the service rates and charges approved by the city council. The franchisee's service rates, fees and charges shall be established and controlled in accordance with FCC rules and regulations adopted for implementation of the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385).

B. Nonpreemption of Lawful Rights. The provisions of this section shall not preempt or abrogate any right of either the city or the franchisee under federal or state law.

C. Nondiscrimination in Service Charges. All the franchisee rates and charges shall be published and nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. The franchisee shall establish similar rates and charges for all subscribers receiving similar services, regardless of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, physical or mental disability or geographic location within the franchisee's franchise area. Nothing in this section shall be construed to prohibit:

1. The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns**;** or

2. The franchisee from establishing separate rates for separate classes of subscribers, including the offering of reasonable discounts to senior citizens and discounts to economically disadvantaged citizens; or

3. The franchisee from charging installation fees which reflect the increased cost of providing service to isolated or sparsely populated areas.

D. Schedule of Rates and Charges. Throughout the term of the franchise, the franchisee shall maintain on file with the city a complete schedule of applicable rates and charges for cable services provided under the franchise, in a form satisfactory to the city. Nothing in this section shall be construed to require the franchisee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. No rate or

charge shall be considered temporary if subscribers have the ability over a period greater than four consecutive months, or such other period as may be approved by the city, to purchase cable services at such rate or charge.

E. Leased Access Rates and Charges. The franchisee shall provide a complete schedule, in a form satisfactory to the city, of rates and charges for any and all leased access channels, or portions of such channels, provided by the franchisee. The schedule shall include a description of the price, terms and conditions established by the franchisee for leased access channels.

F. Notice of Rates and Charges Increase. The franchisee shall provide written notice to the city and subscribers at least thirty days in advance of any increase in rates and charges under this section. Notice to the city of increases in rates and charges shall be filed in a form satisfactory under subsection D of this section.

G. Hearing Impaired. To the extent authorized by law, the city reserves the right to require and regulate the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

H. Service Downgrade Charges. The franchisee shall not impose any service downgrade charges, unless:

1. The subscriber has been notified, at the time of initiating cable services and periodically thereafter, of the franchisee's downgrade charges; and

2. Such charges do not exceed the franchisee's actual direct and incremental costs of performing the downgrade; and

3. The downgrade is from a level of service which the subscriber has not maintained continuously for six months immediately preceding the date of the downgrade request.

I. Service Disconnection Charges. The franchisee shall not impose charges for disconnection of cable service, nor may the franchisee impose any rate, charge or other financial liability upon any subscriber for cable services delivered after the date of a voluntary disconnection request.

J. Adoption of Regulations. The city reserves the right to adopt other lawful regulations governing the franchisee's collection of advance charges and deposits, installation and reconnection charges, disconnection charges, late payment and other administrative and billing charges, upgrade and downgrade charges, the availability of refunds and other franchisee policies and procedures insofar as such policies and procedures substantially relate to the franchisee's subscribers or the city, and not with respect to the internal policies and procedures of the franchisee that do not have such an effect. (Ord. 2931 §17, 1995) .

5.80.180 Franchise fee.

A. Percentage. In consideration of the granting and exercise of a franchise to use city streets and public ways for the operation of a cable communications system, and as compensation for such benefits and privileges under the franchise, the franchisee shall pay to the city during the life of the franchise, a franchise fee not to exceed five percent of the franchisee's annual gross revenues as defined in Section 5.80.030.

B. Schedule and Supporting Data. The franchise fee payments shall be made to the city clerk each fiscal quarter based on estimated revenues with a final fiscal year payment to be submitted, with an audited annual financial statement for the franchisee and parent companies (including statements of income, balance sheets, and statements of sources and applications of funds), within forty‑five days of the end of the franchisee's fiscal year, reflecting any adjustments of the quarterly estimated payments. Payments not received within forty‑five days from the quarter ending date shall be assessed interest compounded at the rate of one percent per month from the due date.

C. Other Material Information. Each such payment shall be accompanied by a statement, in duplicate, verified by a general officer or other duly authorized representative of the grantee, showing in such form and details as the council may require from time to time the facts material to a determination of the amount due.

D. Certifications and Audits. The requirements for audited financial information, as stipulated in subsection B of this section may be met with certified, rather than audited, financial data, unless the city has reason to doubt such verification. whereupon, the city may require a third party audit at the franchisee's cost; however, if the audit report proves to differ from the certified information in question by less than two percent then the city shall bear the cost of the

audit. The city may determine the scope of audit in each instance. Any such audit shall be conducted in accordance with generally accepted audit standards.

E. Noninclusion of Additional Commitments. No term or condition in a franchise shall in any way be interpreted as modifying or affecting the franchisee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth in a franchise agreement may total more than five percent of the franchisee's gross revenues in any twelve‐ month period, such additional commitments are not to be construed by the franchisee as franchise fees as defined under Section 622 of Title VI of the Communications Act of 1934 as amended, nor are they to be offset or credited against any franchise fee payments due the city, nor do they represent an increase in franchise fees to be passed through to subscribers pursuant to Section 622 (c) of said Act, as amended.

F. Payment in Lieu of. The payment to the city by the franchisee pursuant to this section for any calendar year shall be in lieu of any license fee or business tax, prescribed by the city for the same period, but only to the extent of such payment. (Ord. 2931 §18, 1995).

5.80.190 Indemnification and insurance.

A. General Indemnification canon.

1. The franchisee, by accepting a franchise shall be deemed to have agreed and covenanted to indemnify, defend and hold the city, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, defamation and all other damages arising out of or by reason of any construction, excavation, operation, maintenance, reconstruction or any other act done under the franchise, by or for the franchisee, its agents or its employees, or by reason of any neglect or omission of the franchisee to keep its system in a safe condition, but not if arising out of or by reason of any act done by the city or its officers, agents or employees in the exercise of its emergency override authority under Section 5.80.120(B). The franchisee shall consult and cooperate with the city while conducting its defense of the city, and the city shall fully cooperate with the franchisee.

2. The franchisee shall at the sole risk and expense of the franchisee, upon demand of the city, made by and through the city attorney, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi‐ judicial, administrative, legislative or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the city, its officers, boards, commissions, agents or employees, and arising out of or pertaining to the franchisee's construction, operation or maintenance of its cable system.

B. Public Liability and Property Damage Insurance.

1. The franchisee shall at all times maintain in full force and effect public liability and property damage insurance in such form as the city may require, executed by an insurance company authorized to write the required insurance and approved by the Insurance Commissioner of the state of Montana, insuring the payment of any sums which the franchisee or city, its officers, boards, commissioners, agents and employees may become obligated to pay by reason of any liability imposed upon them by law for damages or personal injury including death, demands, actions and suits brought against any of them arising pursuant to a franchise, or in connection therewith, issued under this chapter.

2. The insurance shall provide coverage at all times for not less than four hundred thousand dollars for personal injury to each person, one million dollars aggregate for each occurrence, and one hundred thousand dollars for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than two million dollars covering all claims per occurrence, plus costs of defense; the limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the state of Montana during the term of the franchise. The insurance shall be equal to or better than commercial general liability insurance.

3. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the city and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

4. The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this section without ten days written notice first being given to the city clerk. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this section or the terms of the franchise, the franchisee shall provide a replacement policy. The franchisee shall maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of the franchise.

5. The franchisee shall maintain on file with the city clerk a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the city's risk manager as to the adequacy of the certificate and of the insurance certified under the requirements of this section. Failure to maintain adequate insurance as required under this section, or the franchise issued hereunder, shall be cause for immediate termination of the franchise by the city.

6. In the alternative to providing a certificate of insurance to the city certifying coverage as required above, the franchisee may provide the city with a statement regarding its self‐ insurance. The franchisee's self‐ insurance shall provide the same amount and level of protection for the franchisee and the city, its officers, agents and employees as otherwise required under this section. The acceptance, in lieu of a certificate of insurance as otherwise required by this section, and adequacy of the selfinsurance shall be subject to the review and approval of the city attorney. If the franchisee elects to provide self‐ insurance under this subsection, any failure to maintain adequate self‐ insurance shall be cause for immediate termination of the franchise by the city.

C. Worker's Compensation. Upon being granted a franchise and upon filing of the acceptance required under Section 5.80.040(D)(1), the franchisee shall file with the city clerk and shall thereafter, during the entire term of such franchise, maintain in full force and effect worker's compensation insurance coverage in at least the minimum amounts required by law. If a franchisee fails to obtain or maintain such required insurance coverage, the city may without notice to the franchisee, obtain, at the franchisee's sole expense, such coverage, or forthwith terminate, without prior notice, the franchise as granted.

D. Guaranty in Lieu of Bond.

1. As a condition of franchise award, the city reserves the right to require, at its sole discretion, and throughout the term of a franchise, a faithful performance bond, with good and sufficient surety approved by the city, conditioned that the franchisee shall well and truly observe, fulfill and perform each term and condition of the franchise.

2. The city recognizes that the legal, financial and technical qualifications of a franchisee can normally be expected to be sufficient, throughout the term of the franchise, to afford compliance with the terms of the franchise and the enforcement thereof. The city also recognizes that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for cable services, and in order to minimize such costs, the city may, at its sole discretion, accept a fully executed guaranty, in lieu of a faithful performance bond of the franchisee.

3. Further, the city shall require other bonds and surety only in such amounts and during such times as there is a reasonably demonstrated need therefor, and then only in an aggregate amount not greater than one hundred thousand dollars conditioned upon the substantial performance of the material terms, covenants and conditions of the franchise. Initially, no such bond or other surety will be required. In the event that one is required later, the city shall provide the franchisee at least sixty days prior written notice thereof stating the reason for the requirement.

4. Any bond required pursuant to this section or the franchise agreement shall be conditioned that in the event the franchisee shall fail to comply with any one or more of the material provisions of the franchise, then subject to reasonable notice stating the exact nature of :he violation, and reasonable opportunity to cure, there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the city as a result thereof, including, but not limited to, the full amount of any compensation, indemnification or cost of removal or abandonment of property as prescribed by Section 5.80.180 or 5.80.070(N) which may be in default, up to the full amount of the bond; said condition to be a continuing obligation for the duration of a franchise and thereafter until the franchisee has liquidated all of its obligations with the city that may have arisen from the acceptance of a franchise by the franchisee or from its exercise of any privilege granted by the franchise.

5. Neither the provisions of this section, any bond accepted by the city pursuant thereto, nor any damages recovered by the city thereunder shall be construed to excuse faithful performance by the franchisee or to limit liability of the franchisee under a franchise or for damages, either to the full amount of the bond or otherwise.

6. If, at any time during the term of the franchise, the condition of the corporate surety shall change in such a manner as to render the bond, or guaranty in lieu of bond, unsatisfactory to the city, the franchisee shall replace such bond by a bond, guaranty by a guaranty, of like amount and similarly conditioned, issued by a corporate surety satisfactory to the city. In the event the franchisee's obligations under a franchise shall so warrant, the council, from time to time, may authorize or require appropriate adjustments in the amount of the bond. For example, the amount of the bond may be reduced by the franchisee, with the prior approval of council, at satisfactory completion of system construction, upgrade and/or extension, as may be set forth in the franchise agreement. (Ord. 2931 §19, 1995).

5.80.200 Records and reports.

A. Records. The franchisee shall manage all of its operations within the city in accordance with a policy of keeping its records open and accessible to the city. The city shall have the right to inspect all records of the franchisee and affiliated entities at any time during normal business hours and upon reasonable notice. The franchisee shall not deny the city access to the franchisee's records on the basis that the franchisee's records are under the control of an affiliated entity or a third party, rather than the franchisee.

B. Annual Reports. The franchisee shall provide annually, with the fourth quarter franchise fee payment, a listing of:

1. Annual gross revenues by category, such as basic, pay, pay per view, advertising, installation, digital music, data transmission, home shopping and other miscellaneous revenues;

2. The mid year and year end numbers of subscribers by tier of service, including pay services by service, and number of subscribers for other categories of services. Franchisee shall also provide the total number of subscribers in the city limits as well as those outside the city limits served by the franchisee's Missoula division;

3. Year end cable services provided on the cable system;

4. Year end service rates and fees; and

5. Year end total system(s) plant millage and homes passed, within the city.

C. Reports of Regulatory Violations. The franchisee shall promptly provide copies to the city of all communications to and from any regulatory agency having jurisdiction over the franchisee pertaining to any alleged, apparent or acknowledged violation by the franchisee of any applicable rule, regulation or law of such agency regarding the franchisee's provision of cable services under the franchise.

D. Other Reports. The franchisee shall prepare and furnish to the city clerk at the times and in the form prescribed by said officer, such reports with respect to its operations, affairs, transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the city or any of its officers in connection with the franchise.

E. Material Petitions, Applications and Communications. Copies of petitions, applications and communications, material to a franchise issued hereunder, submitted by the franchisee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the franchisee's cable communications operations, shall also be expeditiously submitted to the city clerk for information purposes.

F. Proprietary and Confidential Material. Except as may be authorized by federal or state laws, regulations or rules, the franchisee shall not be required to disclose any record or material that is reasonably deemed to be proprietary or confidential in nature, nor shall the franchisee be required to disclose any information which would violate subscriber privacy.

G. System Maps. The franchisee shall at all times make and keep in the city full and complete plans and records showing the exact location of all cable communications system equipment installed or in use in the streets and other public places in the city. The franchisee shall file with the city's director of Development Services, on or before the last day of June of each year, a current map or set of maps drawn to scale, showing all cable communications system equipment installed and in place in streets and other public places in the city.

H. Examination of Property. Notwithstanding subsection F of this section, at all reasonable times, the franchisee shall permit any duly authorized representative of the city to examine all property of the franchisee, together with any appurtenant property of the franchisee situated within or without the city, where such property is directly related with the operation or maintenance of a cable system under a franchise granted pursuant to this chapter, and to examine and transcribe any and all maps and other records kept or maintained by the franchisee or under its control which deal with the operations, affairs, transactions or property of the franchisee with respect to its franchise. If any maps or records are not kept in the city, or upon reasonable request not made available in the city, and if the council shall determine that an examination thereof is necessary or appropriate, then travel and maintenance expense necessarily incurred in making such examination shall be paid by the franchisee. Any such examination, or examinations, is herein authorized only where such examination, or examinations, is necessary for the administration or enforcement of the provisions of this chapter or a franchise award ordinance. (Ord. 3492, 2013; Ord. 2931 §20, 1995).

5.80.210 Unlawful activities. A. Unlawful Operation. Except where preempted by federal or state law, it is unlawful for any person to construct, install or maintain within any public right-of-way in the city or within any other public property of the city or within any privately owned area within the city which has not yet become a public right-of-way but is designated as proposed right-of-way on any tentative subdivision map approved by the city, equipment or facilities for distributing any television signals or radio signals through a cable communications system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

B. Unlawful Connections. It is unlawful for any person, firm or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise with any part of any cable communications system within the boundaries of the city for the purpose of enabling himself/herself or others to receive or use any television signal, radio signal, picture, program, sound, information or other system service without payment to the owner of said system.

C. Unlawful Tampering. It is unlawful for any person, without the consent of the franchisee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, information, data or other system device.

D. Obscenity. The franchisee shall not transmit or permit to be transmitted, over any channel subject to its editorial control any programming which is obscene under federal or state law and is otherwise not protected by the Constitution of the United States. (Ord. 2931 §21, 1995).

5.80.220 Parental control device. Upon request by any subscriber, the franchisee shall make available at nominal cost a parental control or lockout device to enable the subscriber to control access to both the audio and video portions of any or all channels. The franchisee shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. (Ord. 2931 §22, 1995).

5.80.230 Compliance monitoring and enforcement. The following specifications apply to the monitoring and enforcement of the provisions of this chapter, the franchise award ordinance and the city's "cable communications customer service and consumer protection policy" as set forth in Chapter 5.82.

A. Dissemination. The city and the franchisee, on an ongoing basis, will take steps to ensure that interested subscribers, the media and members of the general public are informed of the customer service and consumer protection provisions of the city's "cable communications customer service and consumer protection policy" and are provided a copy thereof upon request.

B. Monitoring. The city attorney or his designated representative, on a routine basis will screen all cable-related complaints, communications, reports and other information relevant to the operations of the franchisee received by the city to determine if an issue related to the franchisee's compliance with the provisions of the city's "cable communications customer service and consumer protection policy" has been presented.

C. Investigation. If the city determines that evidence of potential noncompliance with the city's "cable communications customer service and consumer protection policy" has been presented, then the city shall contact the franchisee and take necessary steps to determine if the evidence or additional evidence indicates continuous, recurring or significant noncompliance by the franchisee with and‐ provision of the customer service and consumer protection provisions of the franchise, and if so whether the franchisee is in good faith taking prompt and adequate corrective steps to remedy such noncompliance.

D. Notification. If the city determines that potential noncompliance with any of the provisions of the city's "cable communications customer service and consumer protection policy" is continuous or significant, and that prompt and adequate corrective action is not being taken by the franchisee, then the city shall notify the franchisee that a failure to comply with the policy provisions may have occurred. In that event, the city shall seek written assurances or satisfactory evidence from the franchisee that the affected provision shall be complied with not later than thirty days from the date of notification, and the matter shall be placed on the next available city council agenda for final determination and action.

E. Follow‐ up of noncompliance. In the event of a city council determination of noncompliance adverse to the franchisee under subsection D of this section, the scope of allowable council action includes, but is not limited to:

1. Finding the franchisee in violation of the customer service and consumer protection standard(s) of the franchise at issue;

2. Requiring that the noncompliant franchisee take specific steps within a specified period of time to comply with the customer service and consumer protection standards) of the franchise at issue; and

3. Imposition of appropriate sanctions, as set forth in Section 5.80.250 or 5.80.260, upon the franchisee.

4. The city attorney shall routinely report to the city council on actions undertaken in connection with the provisions of this section and on the status of compliance by the franchisee. (Ord. 2931 §23, 1995).

5.80.240 Non-enforcement by the city. The franchisee shall not be relieved of its obligations to comply with any of the provisions of the franchise by reason of any failure of the city to enforce prompt compliance, nor does the city waive or limit any of its rights under the franchise by reason of such failure or neglect. (Ord. 2931 §24, 1995).

5.80.250 Penalties and other corrective measures.

A. Liquidated Damages. If the franchisee fails, refuses or neglects to comply with any of the terms or provisions of the franchise, any resultant damages suffered by the city may include, inter alia, increased administrative costs and other damages difficult to measure. Therefore, penalties assessed under the franchise shall be considered liquidated damages. The city shall determine penalties as a reasonable estimate of the damages suffered by the city, whether actual or potential.

B. Levy of Fines. The city may levy fines of up to five hundred dollars per instance of demonstrated noncompliance with the service standards set forth in this chapter, the franchise agreement, and the city's "cable communications customer service and consumer protection policy." The franchisee shall pay to the city such fines within thirty days of receipt of notification of such levy. The city may levy a fine of up to three hundred and fifty dollars per day that any instance of noncompliance is not corrected within ten days of notification of the franchisee by the city of the need to correct a specific noncompliance with the procedures and standards set forth in the franchise agreement. The city may levy fines of up to one thousand five hundred dollars per instance of demonstrated noncompliance where a prior fine has been levied against the franchisee for the same type noncompliance within the immediately prior six months.

C. Accumulation of Fines. In the event of an accumulation of three thousand dollars or more of fines in any twelve consecutive months period, the city council may after public hearing and due process deem such accumulation a material breach of franchise requirements under the city's franchise agreement with the franchisee.

D. Extenuating Circumstances. No fine shall be imposed without a hearing before the city council, if and when such hearing is requested by the franchisee. No fine shall be imposed for delays in correcting a demonstrated instance of noncompliance where such delays are the result of causes beyond the control and without fault or negligence of the franchisee as determined by the city. The franchisee shall be entitled to an extension of time if correction of an instance of noncompliance is suspended or delayed by the city or where unusual weather, acts of God (e.g., earthquakes, floods, etc.), extraordinary acts of third parties or other circumstances which are beyond the control of the franchisee,

delay correction of such noncompliance; provided, that the franchisee is not at fault, and is not negligent under the terms of the franchise agreement. The degree of fault and/or negligence and extension of time allowed shall be reasonably determined by the city council. The extension of time in any case shall not be less than the actual no‐fault/negligence delay experienced by the franchisee.

E. Telephone Answering Times. If the customer service telephone answering standards set forth in the city's "cable communications customer service and consumer protection policy" are not met within any two‐month demonstration period, the city, at its discretion, may in addition to the levying of fines, or as an alternative thereto, require the franchisee to immediately employ and maintain staff and install and maintain telephone line capacity up to one hundred and twenty‐five percent of the prevailing cable industry standard. The prevailing cable industry standard shall be measured by the ratio of telephone lines or customer service representatives, whichever is the lower ratio, to cable system basic service subscribers. The prevailing cable industry standards shall be determined by a cable industry survey conducted by an independent analyst chosen by the city. All survey costs shall be borne by the franchisee.

F. Damages in Lieu of Fines. The city may, after council hearing when requested by the franchisee, assess damages in lieu of fines, as follows:

1. The franchisee's failure to make two successive scheduled appointments for service installation shall merit one free service connection and one month of free service to the subscriber, or in the case of missing two successive scheduled appointments for signal quality complaint resolution, two months of free service.

2. Failure, under normal circumstances, to respond to a service call within the time periods specified herein above, shall merit one month free service to the subscriber.

3. Other damages not specifically itemized herein but which are appropriate to the nature and magnitude of the violation may be assessed.

G. Remedies for Delays. In addition to the remedies set forth in this section and within the franchise award ordinance, the city may, at its sole discretion:

1. Assess any late fine payments or any other late compensation payments by the franchisee to the city under the franchise, other than late franchise fee payments which are addressed in Section 5.80.180(B), an interest rate of one percent compounded monthly from the due date;

2. Apply any one or more of the following remedies in connection with delays in cable system(s) upgrade, extension and interconnection(s), and delays in installation of access service drops, hardwired programming origination points and other similar matters set forth in this chapter and the franchise agreement:

a. Find the franchisee in material violation of the franchise,

b. Reduce the duration of the term of the franchise on a month‐to‐month basis for each month of delay exceeding six months,

c. Declare a forfeiture of any construction bond required under Section 5.80.190(D) for any delay exceeding one year, or

d. Terminate the franchise for any delay exceeding eighteen months.

(Ord. 2931 §25, 1995).

5.80.260 Franchise termination or forfeiture.

A. Termination. The council may terminate any franchise granted pursuant to the provisions of this chapter in the event of the willful failure, refusal or neglect by the franchisee to do or comply with any material requirement or limitation contained in the franchisee's franchise issued pursuant to this chapter, or other applicable rule or regulation of the city lawfully adopted pursuant to Section 5.80.290, insofar as such rule or regulation does not conflict with the provisions of the franchise award ordinance.

1. The city attorney may make written demand that the franchisee comply with any such requirement, limitation, term, condition, rule or regulation. Any written demand submitted by the city clerk shall state the exact nature of the alleged noncompliance. If the failure, refusal or neglect continues after notice for an unreasonable period of time, determined as such by council, following such written demand, the city clerk may place his request for termination of the franchise upon the next regular council meeting agenda. The city clerk shall cause to be

served upon such franchisee, at least thirty days prior to the date of such council meeting, a written notice of his intent to request such termination, and the time and place of the meeting.

2. The council shall consider the request of the city attorney and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the franchisee was with just cause.

3. If such failure, refusal or neglect by the franchisee was with just cause, the council shall direct the franchisee to comply within such time and manner and upon such terms and conditions as are reasonable.

4. If the council shall determine such failure, refusal or neglect by the franchisee was without just cause, then the council may, by ordinance, declare that the franchise with such franchisee shall be terminated and forfeited.

B. Forfeiture. In addition to other rights and remedies set forth elsewhere in the franchise, the city may declare a forfeiture of the franchise, and all the franchisee's rights and privileges pertaining thereto and arising thereunder, in the event that:

1. The franchisee violates any material provision of the franchise;
2. A court of competent jurisdiction determines that the franchisee has practiced fraud or deceit upon the city; or
3. The franchisee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the cable system.

C. Notice and Opportunity to Cure. The city shall provide the franchisee thirty days prior written notice of its intent to exercise any of its rights under this section, identifying the reasons for such action. If the franchisee removes or otherwise cures the asserted violation constituting the stated reason within the thirty‐ day notice period, or if cure is not reasonably possible within the thirty‐ day period and the franchisee initiates good faith efforts satisfactory to the city within the thirtyday period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the city shall not exercise its rights under this Section. If the franchisee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty‐ day notice period, or if the franchisee does not undertake and continue efforts satisfactory to the city to remedy the stated reason, then the city may exercise any or all of the remedies available under this section or such other rights as the city may possess.

D. System Purchase at Fair Market Value. In the event of a material breach resulting in a termination of the franchise in accordance with the provisions herein, the city may, subject to federal and state law, purchase or require any successor franchisee to purchase franchisee's facilities at a cost not to exceed its then fair market value. In the event the parties are unable to agree on the fair market value of franchisee's system as specified above, franchisee and the purchaser shall enter arbitration, in order to resolve the disagreement, conducted pursuant to the provisions of the Uniform Arbitration Act, as
set forth in the Montana State Code Annotated, Sections 275‐ 111 through 27‐ 5‐ 324, M.C.A. The term "fair market value" shall not include the rights granted pursuant to the franchise. (Ord. 2931 §26, 1995).

5.80.270 Right of intervention. The city hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this chapter and/or franchisee's franchise, at the city's own expense, or at franchisee's expense with prior approval by franchisee. (Ord. 2931 §27, 1995).

5.80.280 Legal fees. In the event legal action is commenced to enforce any of the terms or provisions of a franchise awarded under this chapter, the losing party shall pay the prevailing party's reasonable attorney fees and costs, including attorney fees and costs incurred on any appeal of such action. (Ord. 2931 §28, 1995).

5.80.290 Adoption of rules and regulations. At any time, the council may, as necessary, adopt rules, regulations and standards governing the operation of cable communications systems in the city, consistent with provisions of this chapter, and the franchise agreement. Such rules, regulations and standards may apply to and govern the operations of the franchisee of any cable communications franchise and are expressly declared to be a part of any such franchise. Prior to adopting any such rule, regulation or standard, the council shall conduct a duly noticed hearing thereon. At the time set for such hearing or at any adjournment thereof, the council, by resolution, may adopt, amend or modify such rules and regulations, as long as it does not impose unreasonable financial or operational burdens on franchisee. The standards adopted may govern engineering, construction, installation, service, technical performance, maintenance and performance testing of all cable communications systems in the city. (Ord. 2931 §29, 1995).

5.80.300 Amendment or modification of this chapter and the franchise.

A. Amendment. The council shall amend this chapter and any franchise issued thereunder, upon its own motion or the application of a franchisee whenever amendment is necessary to enable franchisee to utilize new developments in cable communications, television, or radio signal transmission which would improve and update cable communications service in the city, or to comply with any modifications in the Rules of the FCC. No amendment shall be adopted except after full open public hearing afforded due process, and no amendment substantially amending existing rights and obligations of the franchisee shall be adopted without franchisee's consent.

B. Modification. A franchise agreement awarded under this chapter shall be deemed to have been entered into by the parties, city and franchisee, under the terms of the Federal Communications Act of 1934 as amended by the Cable Communications Policy Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992, and other federal and state laws in effect on the effective date of the franchise. The city and the franchisee shall also be deemed to have reserved the right to request modifications in the terms and conditions of the franchise to account for changes in the law during the term of the franchise. Upon written notice from either party, the city and the franchisee shall voluntarily negotiate, in good faith, to modify the terms and conditions of the franchise to account for changes in the law during the term of the franchise. The purpose of the negotiations shall be to modify the franchise so that the net rights and obligations of the city and the franchisee remain substantially the same after the modification, as they were prior to the events and circumstances leading to the arbitration proceeding. If the city and franchisee are unable to successfully conclude the negotiations within ninety days from the date of written notice requesting the modification, the matter shall be submitted to arbitration as set forth in Section 5.80.260(D). (Ord. 2931 §30, 1995).

5.80.310 Severability. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, phrase and words hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words be declared illegal, invalid or unconstitutional. The invalidity of any portion of this chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the franchisee by the franchise granted hereunder. (Ord. 2931 §31, 1995).

5.80.320 Notices. Every direction, notice or order to be served upon a franchisee shall be hand delivered or sent by certified mail to the local office described in Section 5.30.130(A). Every notice to be served upon the city shall be hand delivered, or sent by certified mail, to the city clerk at: City Hall, 435 Ryman, Missoula, Montana, 59802. The delivery of such shall be deemed to have been at time of receipt. (Ord. 2931 §32, 1995).

Chapter 5.82

CABLE COMMUNICATIONS CUSTOMER SERVICE AND CONSUMER PROTECTION POLICY

Sections:

5.82.010 Title.
5.82.020 Purpose and intent.
5.82.030 Definitions.
5.82.040 Local office business hours.
5.82.050 Service sales and installations.
5.82.060 System outage and complaint service.
5.82.070 Service notices and billings.
5.82.080 Nondiscrimination.
5.82.090 Customer service representatives and telephone lines.
5.82.100 City clerk to administer ordinance with assistance from city attorney and finance offices.
5.82.110 Adoption of rules and regulations.
5.82.120 Notices.
5.82.130 Severability.

5.82.010 Title. This chapter shall be known as the "Missoula Cable Communications Customer Service and Consumer Protection Policy Ordinance." (Ord. 2933 §1, 1995).

5.82.020 Purpose and intent. Title VI (Cable Communications) of the Communications Act of 1984, as amended or added by the Cable Television Consumer Protection and Competition Act of 1992, establishes guidelines for the exercise of federal, state and local authority with respect to the regulation of cable communications systems. The Missoula city council has determined that it is in the public interest, and the city's right and responsibility under federal law, to regulate cable communications systems' customer service and consumer protection standards within the city. No provision of this chapter is intended to be in conflict with any preemptive provision of federal or state law. Whenever a preemptive provision of federal or state law exists with respect to any provision of this chapter, the federal or state law shall take precedence. (Ord. 2933 §2, 1995).

5.82.030 Definitions. For the purposes of this chapter, and any cable communications franchise granted by the city, the terms, phrases, words, abbreviations and their derivations used in the provisions of this chapter shall have the meaning as specified in Section 5.80.030 unless the context of this chapter indicates otherwise. (Ord. 2933 §3, 1995).

5.82.040 Local office business hours. The franchisee's local office, shall remain open during normal business hours at least eight hours daily, five days per week, except for national holidays, and on any one weekday at least an additional two evening hours, with adequate staff to expeditiously and efficiently accept subscriber payments and respond to customer service requests, complaints and inquiries. Such office shall include a TTY phone for communicating with the hearing impaired. If franchisee does not have a local office it shall have a toll free number to facilitate subscriber contact with franchisee. (Ord. 2933 §4, 1995).

5.82.050 Service sales and installations.

A. Installation Staff. The franchisee shall maintain an installation staff capable of installing service to any subscriber within seven days after receipt of a request of service, in all areas where trunk and feeder cable have been activated.

B. Appointments. As a normal operating procedure, upon subscriber request the franchisee shall provide either a specific appointment time or else a pre‐designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled Monday through Saturday in the morning or the afternoon. If the franchisee's service technician is unable to keep an appointment concerning an installation, the franchisee shall ensure that the subscriber is advised in a timely manner of the delay and attempt to re‐schedule the appointment.

C. Written Advisory. Upon installing initial service to or reconnecting each customer, and upon request thereafter the franchisee must advise the customer, in writing, of

1. The equipment and services currently available (including parental lock‐out devices) and the rates and charges which apply;

2. The franchisee's policies and procedures by which complaints or inquiries of any nature will be addressed;

3. The toll‐free telephone number and address of the franchisee's office to which complaints and inquiries may be reported;

4. The company's practices and procedures for protecting against invasions of subscriber privacy; and

5. The notice and referral information to the Missoula city clerk's office, as set forth in Section 5.82.160. (Ord. 2933 §5, 1995).

5.82.060 System outage and complaint service. The franchisee shall maintain a subscriber complaint service for routine handling of subscriber service requests, as follows:

A. Complaint Response. The franchisee shall respond competently and expeditiously to all subscriber requests for resolution of service problems, making every reasonable effort to avoid and/or minimize problems in reception caused by the cable plant. Priority in such service will be given subscribers who report total loss of reception on all channels.

B. Loss of All Channels. A call involving loss of reception on all channels will be dispatched to the field expeditiously (i.e., without undue delay) during normal business hours. If a loss of reception on all channels affects five or more subscribers, at any time of day or night, technicians will be alerted immediately, and repairs will be commenced as soon as reasonably possible (i.e., normally within two hours) and pursued diligently (these outages being from a related service problem).

C. Loss Affecting Less Than Five Subscribers. Total loss of reception involving less than five subscribers related to a common problem will normally be corrected on the same day received except if reported after two p.m.; in which case, correction may be postponed to the following day. At least ninety percent of all outages (total loss of reception on all channels) will be corrected within twelve hours or less, presuming correction is within the control of the franchisee. All such outages will be corrected within twenty‑four hours or less, with the exception of those beyond the reasonable control of the franchisee.

D. Call Reception. The franchisee shall enable subscribers to contact the franchisee, twenty‑four hours per day, seven days per week, in order to alert the franchisee to any and all reception problems. An answering service may be used to take subscriber telephone calls and provide at least emergency referral information, after normal business hours or on weekends. The franchisee shall be responsible for the receipt of all calls from the answering service and, as soon as is practicable, schedule service calls for affected subscribers.

E. Response Times. The franchisee shall normally acknowledge by telephone all requests for service repair, maintenance and service changes from subscribers within twenty‑four hours (excluding weekends and holidays) or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on‑premises work must be completed within twenty‑four hours under normal operating procedures. At least ninety percent of the service complaints and service changes shall be resolved within seventy‑two hours, and in any event all such requests shall be resolved within one week from the date of the franchisee's receipt of same. No charge may be made to subscribers for this service, except in cases beyond the reasonable control of the franchisee, such as documental cases of repeated subscriber negligence or abuse of the franchisee equipment.

F. Scheduled Service Interruptions. Scheduled service interruptions for system preventative maintenance, etc., shall be preceded by reasonable notice to subscribers and shall occur during the period of minimum use of the system, preferably between midnight and five a.m.

G. Service Outage Refund. Except for planned outages where subscribers are provided reasonable notification in advance, upon a subscriber's request the franchisee shall provide a pro‑rated credit, but not less than one dollar, to the subscriber's account for any period during which that subscriber experienced an outage or substantial impairment of cable service.

H. Procedures Notice. New subscribers shall be notified of complaint procedures.

I. Subscriber Convenience. The franchisee shall make every reasonable effort to ensure convenient scheduling of service appointments. As a normal operating procedure, upon subscriber request the franchisee shall provide either a specific appointment time or else a pre‑designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled a minimum of eight hours per day, Monday through Friday, except for national holidays, in the morning, the afternoon or after five p.m. (repair only).

J. Rescheduling Appointments. If the franchisee's service technician is unable to keep a complaint service appointment the franchisee shall ensure the subscriber is advised in a timely manner of the delay, and attempt to re-schedule the appointment.

K. Door Hangers. If, in response to a complaint, the service technician finds no one home, a call to the dispatch operator shall be made; who, in turn, shall try to contact the subscriber by phone. If the subscriber is still not contacted, the service technician shall check and if practicable correct any problems found outside the subscriber's residence, and leave a door hanger informing what was found and corrected, and requesting the subscriber to make a service appointment if the problem still exists.

L. Problem Call. If the subscriber is home, the service technician shall introduce himself/herself, talk with the subscriber, determine the cause of the problem and correct it if the problem lies in the cable system.

M. Mobility Limited Subscribers. As a normal operating procedure, and with particular regard to the needs of working or mobility‑limited customers, upon subscriber request the franchisee shall arrange for pick‑up and/or replacement of converters or other company equipment at the subscriber's address or else a satisfactory equivalent (such as the provision of a postage‑prepaid mailer).

N. Technician Demeanor. In contact with subscribers, the franchisee shall maintain a professional and courteous demeanor. Service technicians shall be properly equipped to locate and correct service problems which are caused by the cable plant.

O. Service Call Follow‑ up. The franchisee shall have a follow‑ up policy to ensure subscriber satisfaction. At least ten percent of all completed service orders, i.e., service repairs, installations and consumer complaints, should be followed‑ up by a telephone call, postcard or both. Such follow‑ up to be logged. The franchisee shall make every reasonable effort to correct deficiencies in cable plant or system maintenance practices which are revealed by this follow‑ up policy.

P. Semi‑ Annual Notice. The franchisee shall semi-annually send written notice to all subscribers that any complaints or inquiries not satisfactorily handled by the company may be referred to the city of Missoula attorney's office. Such notification may be included with a billing statement, and shall contain either the following printed text or an alternate text approved by the city attorney; or as required by the FCC:

PLEASE READ THIS

The City of Missoula is responsible for monitoring the customer service, system performance and franchise compliance of your cable company. Towards this end, the City and cable company work continuously to monitor and improve cable TV customer service in your community.

However, at times you may encounter problems with your cable service that you have been unable to resolve with your cable company. The City Clerk's Office is available to help you with unresolved problems. If this is the case, please call the City Clerk's Office weekdays, or write to the City Clerk at the City Hall, 435 Ryman, Missoula, Montana, 59802.

However, please contact your cable company FIRST, before calling the City Clerk's Office about your problem.

This announcement has been brought to you as a public service of the City of Missoula and your cable company.

PLEASE SAVE FOR FUTURE REFERENCE

Such notice, in large boldface type, shall also be posted in a conspicuous place within the franchisee's offices located in the city where customer service transactions are conducted, such that customers have ready visual access thereto.

Q. Data Base. The franchisee will maintain a data base or log, listing date of consumer complaints, identifying the subscriber and describing the nature of the complaint and when and what action was taken by the franchisee in response thereto. The data base shall be maintained from the date of first subscriber service or franchise award, whichever is sooner. Such record shall be kept accessible at the franchisee's local office for a period of three years. Within constraints of applicable federal or state laws, these records shall be available for inspection during regular business hours, upon seventy‑ two hours advance notice or demand by a duly authorized representative designated by the city council.

R. Service Disconnection. The franchisee may disconnect a subscriber for cause if:

1. At least thirty days have elapsed after the due date for payment of the bill of the affected subscriber; and
2. The franchisee has provided at least ten days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.

S. Disconnection For Cause. Regardless of the services disconnect provisions in subsection R of this section, the franchisee may disconnect a subscriber for cause at any time if the franchisee in good faith determines that the subscriber has tampered with or abused company equipment, or is or may be engaged unlawfully in theft of cable service.

T. Subscriber Requested Disconnect. The franchisee shall promptly disconnect any subscriber who so requests from the franchisee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the franchisee. Scheduling of disconnects to be in accordance with service installation scheduling policies set forth herein above. No charge may be imposed by the franchisee for such voluntary disconnection, or for any cable services delivered after the customer requested date for the service to be disconnected.

U. Refund of Deposit. Upon the later of the date of actual service disconnection or the return of all company equipment to the franchisee, the franchisee shall within ten working days return to such subscriber the amount of the

deposit, if any, collected by the franchisee from such subscriber, less any undisputed amounts owed to the franchisee for cable services or charges prior to the date of disconnection. (Ord. 2933 §6, 1995).

5.82.070 Service notices and billings.

A. Advance Notice of Service Changes. The franchisee shall provide its subscribers and the city written notice at least thirty days in advance of any deletions in programming services, increases in any rates, costs or charges to subscribers or any channel repositioning within the control of the franchisee.

B. Clarity Of Service Information. All the franchisee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all the franchisee-provided promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, the franchisee shall take appropriate steps to ensure that the franchisee's customer service representatives clearly and accurately disclose price terms to potential customers in advance of taking the order. Each franchisee bill to subscribers must itemize each category of service, equipment or other applicable fees and clearly state the charge therefor. (Ord. 2933 §7, 1995).

5.82.080 Nondiscrimination.

A. Services and Facilities Availability. No franchisee shall unlawfully discriminate against any person in the provision of cable television services on the basis of actual or perceived (as defined in MMC 9.64.020) race, color, religion, national origin, ancestry, sex, sexual orientation, or gender identity or expression, age, disability, income or the area in which the person lives. The franchisee shall use best efforts to assure maximum practical availability of the franchisee services and facilities to all subscribers, regardless of disability, including the provision of a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.

B. Hearing Impaired. For hearing impaired customers, the franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services, including - but not necessarily limited to
- all extended basic tiers, for the hearing impaired. (Ord. 3428 §11, 2010; Ord. 2933 §8, 1995).

5.82.090 Customer service representatives and telephone lines.

A. Minimum of Telephone Call Delay. The franchisee shall provide sufficient subscriber service representatives and toll-free telephone lines to ensure the capacity to handle normal call volume with a minimum of delay to customers, and that ninety percent of all callers will not be required to wait more than one minute before being connected to a service representative. For purposes of determination of the franchisee compliance with this standard, a period of two contiguous months shall pertain, excluding periods of major outages of system services beyond the franchisee's control.

B. Compliance Demonstration. Upon reasonable notice by the city, the franchisee shall demonstrate compliance with any or all of the service complaint procedures and standards set forth herein above. The franchisee shall provide sufficient detail to permit the city to verify the extent of compliance. Such detail to include, but not be limited to, the following information:

1. Current number of total system subscribers;

2. Current number of customer service representatives;

3. Current number of incoming telephone lines available to the general public;

4. The number of calls answered by the telephone system sequencer within the preceding month;

5. The average number of minutes callers were kept on the sequencer prior to being connected to a customer service representative for a period of at least one month;

6. The average number of minutes callers were kept on the sequencer after having been connected to a customer service representative and then returned to the sequencer;

7. The percentage of the time during normal business hours for a period of at least one month in which all telephone lines were busy. (Ord. 2933 §9, 1995).

5.82.100 City clerk to administer ordinance with assistance from city attorney and finance offices. The city clerk's office shall be the office within city government primarily responsible for receiving and administering cable communications customer service and consumer protection policy ordinance complaints and concerns. The city attorney and finance offices shall provide assistance to the city clerk with respect to cable communications customer service and consumer protection policy matters. (Ord. 2933 §10, 1995).

5.82.110 Adoption of rules and regulations. At any time, the council may, as necessary, adopt rules, regulations and standards governing cable communications customer service and consumer protection activities consistent with the Federal Communications Act of 1934 as amended by the Cable Communications Policy Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992. Such customer service and consumer protection rules, regulations and standards (policy) may apply to and govern the customer service activities and operations of the franchisee of any cable communications franchise, and are expressly declared to be a part of any such franchise. Prior to adopting any such rule, regulation or standard, the council shall conduct a duly noticed hearing thereon. At the time set for such hearing, or at any adjournment thereof, the council, by resolution, may adopt, amend or modify such rules, regulations and standards as long as it does not impose unreasonable financial or operational burdens on the franchisee. (Ord. 2933 §11, 1995).

5.82.120 Notices. Every direction, notice or order to be served upon a franchisee shall be hand delivered or sent by certified mail to the office described in any franchise. Every notice to be served upon the city shall be hand delivered, or sent by certified mail, to the city clerk at: City Hall, 435 Ryman, Missoula, Montana, 59802. The delivery of such shall be deemed to have been at time of receipt. (Ord. 2933 §12, 1995).

5.82.130 Severability. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, phrase and words hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words be declared illegal, invalid or unconstitutional. The invalidity of any portion of this chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the franchisee by this customer service and consumer protection policy. (Ord. 2933 §13, 1995).

Chapter 5.84

MISSOULA CIVIC TELEVISION ADVISORY COMMISSION

Sections:

5.84.010 Purpose
5.84.020 Composition and Appointment of Commission
5.84.030 Missoula Civic Television Advisory Commission meetings and responsibilities

5.84.010 Purpose. In order to provide advisory guidance and assistance to operators and administrators of public access government channels established and operated pursuant to City of Missoula cable television franchise the Missoula city council establishes the Missoula Civic Television Advisory Commission to advise and make recommendations to the operators and administrators of the public access government channel. (Ord. 3396, 2009; Ord. 3289 §1, 2005)

5.84.020 Composition and Appointment of Commission. The Missoula Civic Television Advisory Commission shall consist of ten members--four shall be residents of the city, two members of the city council and one city employee designated by the Mayor, one member designated by the County Commissioners, and one member designated by the School Board. The Missoula Civic Television Advisory Commission shall designate a member for the University of Montana. Of the four resident appointments, two of the appointments shall be made by the mayor with the advice, consent and approval of the city council, and two appointments shall be made by the city council. The terms shall include two and three year appointments. Two of the residents shall serve for 2 years and two of the residents shall serve for 3 years. (Ord. 3396, 2009; Ord. 3302, 2005; Ord. 3289 §2, 2005)

5.84.030 Missoula Civic Television Advisory Commission meetings and responsibilities.
A. The Missoula Civic Television Advisory Commission shall meet at such times as the commission shall determine.

B. The Missoula Civic Television Advisory Commission shall:
1. Make suggestions to the public access channel administrators and/or the city council, at least on an annual basis, regarding the administration and operation of the government and public access channels;
2. Review the construction plans and schedule updates as set forth in the franchise, and monitor the construction of the system upgrade and report to the city council on the same;
3. Review all reports and materials submitted by the cable television franchise grantee to the city as required under the franchise;
4. Review complaints of subscribers which have not been timely and/or adequately satisfied by the grantee;
5. On or before November 1st of each year, submit a report to the city council summarizing the commission's review of reports and materials submitted by the grantee as provided above, and any subscriber complaints;
6. Conduct any other review as allowed by the city council or the commission pursuant to applicable laws; and
7. Upon request of city council, provide input on issues relevant to any periodic evaluation or renegotiation sessions. (Ord. 3396, 2009; Ord. 3289 §3, 2005)

Chapter 5.90

DEVICES DEPICTING SEXUAL ACTIVITIES

Sections:

5.90.010 Purpose.
5.90.020 Definitions.
5.90.030 License‐‐Fee.
5.90.040 License‐‐Application.

5.90.010 Purpose. The purpose of this chapter is to recognize and to provide for the fact that the operation of mechanical amusement devices which depict or display specified sexual activities or specified anatomical areas results in increased enforcement problems for the city and additional expense to the city that justifies a higher license fee. This necessitates greater police vigilance to assure that the lawful business of displaying non-obscene portrayals of depictions of sexual conduct is not used inadvertently or by design as the means of unlawful displaying or depicting obscenity. In order to recoup some of the costs thus imposed on the city, it is appropriate that there be imposed on the persons who profit from such devices some of the costs of ensuring that the devices are used only lawfully. (Ord. 2554 §1, 1987).

5.90.020 Definitions.

A. "Device" under this chapter shall include any machine used on premises as opposed to being available as a rental for off‐premises use and which, upon the insertion of a coin or the payment of consideration, depicts, displays or projects directly or indirectly pictures, photographs or other visual images of anatomical areas or specified sexual activities.

B. "Specified anatomical areas" means less than completely and opaquely covered human genitals, pubic region, buttock, female breast below a point immediately above the top of the areola, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

C. "Specified sexual activities" means:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling of human genitals, pubic region, buttock or female breast. (Ord. 2554 §2, 1987).

5.90.030 License—Fee. The license fee for a device under this chapter shall be established and amended by the City Council after conducting a public hearing.

The annual business license shall be effective for a maximum time period of one year in accordance with the city's general annual business licensure year from June 1st each year to the final day of May of the following year. All annual business licenses expire on the final day of May each calendar year.

(Ord. 3524, 2014; Ord. 3461, 2011; Ord. 3434 §10, 2010; Ord. 3383 §10, 2008; Ord. 3351 §10, 2007; Ord. 3322 §10, 2006; Ord. 3299 §10; Ord. 3258 §10, 2004; Ord. 3229, 2003; Ord. 29527 §4, 1995: Ord. 2699 §1, 1989: Ord. 2554 §3, 1987).

5.90.040 License‑‑Application. Application shall be made to the city treasurer's office on a form provided by the city treasurer and shall contain in addition to the name, address and general information required, the following:

A. A complete list of the devices owned by the applicant subject to this licensing with an indication thereon of the location of each machine;

B. That the applicant has not been convicted of any crime or misdemeanor involving moral turpitude or violence against an individual. (Ord. 2554 §4, 1987).

Chapter 5.100

ADMINISTRATIVE REGULATIONS FOR REGULATING BASIC CABLE SERVICE RATES

Sections:

5.100.010 Purpose.
5.100.020 Adoption of Federal Communication Commission Regulations by reference.
5.100.030 City basic cable service rate regulation commission.
5.100.040 Personnel to administer municipal basic cable service rate regulation.
5.100.050 Information and data requests directed to cable service providers.
5.100.060 Public hearing.

5.100.010 Purpose. The city of Missoula filed for certification to be authorized to regulate cable television rates for basic service and associated equipment. Pursuant to Federal Communications Commission certification procedures the city is approved for certification. The purpose of this chapter is to declare the city council's intent to exercise the authority granted to it by United States Code and Federal Communications Commission regulations pertaining to regulating basic cable service rates in instances where there is lack of effective competition as determined by federal law and the cable service provider has the exercise of municipal government regulatory authority of basic cable service rates. (Ord. 2882 §1, 1994).

5.100.020 Adoption of Federal Communication Commission Regulations by reference. The city council adopts by reference the Federal Communication Commission regulations for basic cable service rates to the extent that they pertain to municipal government regulation of basic cable service rates. Any of these regulations or additional regulations adopted by the city council shall be in accordance with the regulations adopted by the Federal Communications Commission as required by federal law. If any additional city council regulation is inconsistent with any federal law required consistency with regulations adopted by the Federal Communications Commission the Federal Communication regulations shall prevail. As regulations become available to local governments the city will attempt to timely obtain a current copy of applicable Federal Communication Commission cable rate regulations and make them available in the city attorney's office. (Ord. 2882 §2, 1994).

5.100.030 City basic cable service rate regulation commission. The city council governing body shall serve as the city basic cable service rate regulation commission for basic cable service rate regulation purposes. (Ord. 2882 §3, 1994).

5.100.040 Personnel to administer municipal basic cable service rate regulation. The city council prescribes the duties of city officers and employees with respect to city administration of municipal basic cable service rate regulation as follows:

A. All reports, records and plans submitted to the city by a cable service provider as well as any written citizen comments shall be submitted to the city clerk as the keeper of the city records and papers and then distributed by the city clerk to the mayor, city council and any city staff deemed appropriate by the city clerk.

B. The city clerk shall be responsible for making and keeping correct minutes of all proceedings of the city basic cable service rate regulation commission.

C. The city finance officer or the finance officer's financial designee shall be responsible for assisting the city basic cable service rate regulation commission with any financial analysis of financial reviews requested by the commission.

D. The city attorney, or the city attorney's designee shall be responsible for assisting with any legal assistance requested by the commission. (Ord. 2882 §4, 1994).

5.100.050 Information and data requests directed to cable service providers. Cable service providers shall comply with city basic cable service rate regulation commission requests for financial information, consistent with Federal Communications Commission regulations, financial statements filed with the Federal Communications Commission, and any other information necessary for the city basic cable service rate regulation commission to perform its rate regulation reviews. When applicable the financial information shall be submitted by the cable service provider in the format or on the forms requested by the city basic cable service rate regulation commission. Any cable service provider request for confidentiality for any materials submitted must be consistent with Federal Communications Commission regulations. (Ord. 2882 §5, 1994).

5.100.060 Public hearing. The city basic cable service rate regulation commission shall conduct a public hearing with respect to any review of a cable providers basic cable service rates. The basic cable service provider shall receive direct personal notice of the date and time of the public hearing. Public notices shall be published in a local newspaper of general circulation once a week for two weeks prior to the public hearing. During the public hearing the cable service provider shall be afforded a reasonable time period at the public hearing to thoroughly present and explain its basic cable service rates and shall also be provided an additional reasonable time period to respond to any public comments or questions raised pertaining to their basic cable service rates. The public hearing shall ensure a reasonable opportunity for consideration of the views of interested parties. (Ord. 2882 §6, 1994).

Title 5.110
Online Privacy Protections

Sections:

5.110.010 Purpose and Intent
5.110.020 Definitions
5.110.030 Restrictions
5.110.040 Exemptions
5.110.050 Violation – Penalty and Civil Remedy

5.110.010 Purpose and Intent.
The intent of the City of Missoula is to protect personal accounts and private information on electronic communication devices of applicants and employees while protecting a business's access to information that is otherwise public or proprietary.
A. The city finds that requests for personal and private electronic communication threaten Missoulians' right to privacy.
B. The city does not intend to prohibit law enforcement from conducting investigations into illegal activity in order to ensure compliance with applicable laws.
(Ord. 3507 §1, 2013)

5.110.020 Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Applicant" means a person applying for employment.
(2) "Electronic communication device" means any device that uses electronic signals to create, transmit, or receive information, including computers, telephones, personal digital assistants, and any other similar device.
(3) "Employment" means the relationship between the business and employee.
(4) "Personal account" means any password-protected information accessed via an electronic communication device, either online or offline, including but not limited to media such as text, audio, video, images, programs, or services.
(5) "Privacy settings" means the settings associated with a personal account that regulates the amount of information that the account holder makes publicly available.
(Ord. 3507 §2, 2013)

5.110.030 Restrictions.
Except as provided in section 4, a business, a business's agent, or a business's representative may not:
(1) Require an employee or applicant to:
(a) Disclose the user name, password, or any other means of access to a personal account;
(b) Disclose any information not publicly available that is protected by a password on a personal account;
(c) Add any person or any other person's personal account to a list of contacts associated with a personal account; or
(d) Change the privacy settings associated with a personal account;
(Ord. 3507 §3, 2013)

5.110.040 Exemptions
Sections 1 through 4 do not prohibit:
(1) Law enforcement from accessing personal accounts pursuant to a court order or subpoena; or
(2) A business or business's agent from:
(a) Conducting an investigation for the purpose of compliance with applicable laws or regulatory requirements of specific allegations of employee misconduct in violation of a written company policy, based on a reasonable belief that such a violation occurred.
(b) Requiring an employee to disclose any user name, password, or other means of accessing non-personal accounts or services that provide access to the business's computer or information systems;
(c) Requiring or requesting an employee to disclose a user name, password, or other method of access for the purpose of accessing an business-issued electronic communications device;
(3) Any requests for personal accounts and private information on electronic communication devices by businesses if that business is located outside city limits and city residents are employees or applicants.
(Ord. 3507 §4, 2013)

5.110.050 Violation – Penalty and Civil Remedy.
(1) Any illegal requests for personal accounts and private information on electronic communication devices are to be civil municipal ordinance violations intended to be enforceable solely by the complaining person claiming a violation of these sections or their authorized representative through a civil proceeding within the exclusive jurisdiction of the City of Missoula Municipal Court. The Montana Rules of Civil Procedure shall apply, except and unless the City of Missoula Municipal Court establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the City of Missoula Municipal Court.
(2) Any person claiming a violation of this chapter may seek remedies, injunctive relief, or other equitable relief by petition to the municipal court, or any other court of competent jurisdiction. Any person claiming a violation of this ordinance must seek such relief within:
(A) 180 days of the last alleged violation,
(B) 180 days of the conclusion of a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement, or
(C) 300 days of the last alleged violation if a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement has not been completed within 120 days of initiation of the proceeding.

(3) The initiation of or the granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this chapter. Defendants shall not collect attorney's fees unless the claim is clearly frivolous, unreasonable, or factually groundless, or the claimant continued to litigate after the claim clearly became so.

(4) There shall be no imprisonment as a penalty for a violation of this chapter.
(Ord. 3507 §5, 2013)

Chapter 5.120 Cannabis

Sections:
5.120.010 Applicability
5.120.020 Air Quality Mitigation

5.120.010 Applicability

These regulations apply to any cannabis cultivation or cannabis manufacturing facilities seeking a business license under Chapter 5.08 (medical or recreational), new or existing unless specifically exempted.

5.120.020 Air Quality Mitigation

Cannabis cultivation and manufacturing may produce nuisance odors which can spread into public spaces. To mitigate this impact, in order to be eligible to receive a business license under Chapter 5.08, cannabis cultivation, cannabis manufacturing facilities, or a combination of the two shall install and maintain carbon filters. The filters and associated fan shall be sized and installed according to the manufacturer recommendations and shall circulate air equal to the volume of the room used for cultivating or manufacturing no less than once per every 5 minutes.

To calculate the requirements for filter and fan size, divide the volume of the room used for cultivating or manufacturing (length x width x height) by the exchange rate (5 minutes). The resulting value will be the cubic feet per minute (cfm) requirements corresponding to the fan and filter specifications. The total cfm requirements can be split across multiple filters. Some flexibility may be required depending on the layout of the room used for cultivating or manufacturing, and the ducting associated with the fan and filter.
(Ord. 3701, 2022)

Chapter 5.130 Short Term Rental Registration

Sections:
5.130.010 Purpose; Applicability.
5.130.020. Definitions.
5.130.030 Owner Obligations.
5.130.040 Hosting Platform Obligations.
5.130.100 Violations.

5.130.010 Purpose; Applicability.

A. Purpose. The purpose of this section is to provide for the regulation of the listing, advertisement and booking of short term rentals within the City to ensure that Tourist Homes are properly registered and in compliance with applicable City regulations in order to preserve neighborhood character and promote a supply of long term rental housing stock, while encouraging economic activity and diversity, and to promote public health, safety, and welfare.

B. Applicability. The provisions of this section apply to transient occupancy of a short term rental as defined herein. This section does not apply to any rental of a dwelling unit which is governed by The Montana Residential Landlord and Tenant Act of 1977 (Landlord Tenant Act).

5.130.020. Definitions.

For the purpose of this Chapter, the following definitions apply:

A. "Booking Transaction" means any reservation or payment service provided by a hosting platform that facilitates a short term rental transaction between an owner and a transient occupant.

B. "Director" means the Director of the City's Community Planning, Development and Innovation department, or their designee.

C. "Owner" includes any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, or lessee with exclusive possession under a valid long-term lease or rental agreement, or an owner's designee.

D. "Hosting Platform" means a person or entity that participates in the short term rental business by collecting or receiving a fee directly or indirectly for any booking transaction through which an owner may offer a dwelling unit or portion thereof for transient occupancy. hosting platform includes but is not limited to an online service and an individual using any other means to collect or receive a fee on behalf of an owner for a transient occupancy of a short term rental.

E. "Registration number" means the number assigned by the City after review and approval of the short term rental application.

F. "Short term rental" means any dwelling unit, as that term is used in the International Residential Code adopted in Title 15, MMC, that is rented out for a period of occupancy less than 28 consecutive days where the renter/guest has a principal residence other than the short term rental. Short term rental is intended to include tourist homes regulated under Title 20, MMC, as well as other types of dwelling units offered for short term occupancy (less than 28 days). Short term rental does not include rental of less than a full dwelling unit, such as the rental of a room or rooms in an owner-occupied home.

G. "Tourist home" has the same mean provided in Title 20.105.040, MMC: a private home or condominium that is not occupied by an owner or manager and is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis (MCA § 50-51-102(12)). Transient guest is defined as a guest for only a brief stay, such as the traveling public (MCA § 50-51-102(13)).

5.130.030 Owner Obligations.

A. Hosting Registration. Within the City it is unlawful for any person to operate a short term rental without having first registered the short term rental with the City's Community Planning, Development and Innovation (CPDI) department. A separate registration shall be required for each short term rental unit. Approval of a short term rental application results in the City issuing a registration number for the short term rental. Tourist Homes subject to and currently registered with the City pursuant to the provisions of Title 20.40.135, MMC, shall be considered to have complied with this Section, and the tourist home registration number shall serve as that unit's short term rental registration number. The owner must include the registration number issued by the City in all listings and advertisements of the owner's short term rental on any hosting platform and print advertising.

B. Registration Process; Rules. The Director is authorized to make administrative rules governing the application process, renewal process, and if determined to be in the public interest by the Director: safety and inspection standards and requirements. The application fee shall be set by City Council.

C. Initial Grace Period. Applications for short term rental registration received by the City within 90 days of [codifier's note: the effective date of this ordinance] will be assigned a provisional registration number. This number may be used by the owner until the City makes a final determination regarding the short term rental. If the City makes a decision to not approve a short term rental due to failure to comply with applicable regulations, the provisional registration number shall be revoked, and the owner must cease using the number in all listings and advertisements. Use of a revoked registration number in listing or advertisement of the short term rental shall be a violation of this chapter.

5.130.040 Hosting Platform Obligations.

A. Compliance with laws. In addition to the provisions of this section, a hosting platform must comply with all other applicable local, state and federal laws.

B. Reporting requirements. A hosting platform must provide the following to the City:

1. A quarterly report that includes relevant information for each short term rental listing, including but not limited to hyperlinks to each short term rental listed on the hosting platform during the quarter; and

2. Upon presentation to the hosting platform of a duly obtained administrative warrant from a court of competent jurisdiction, the address of the short term rental identified in the warrant and the name of any owner, and responsible person if different than the owner, for the short term rental identified in the warrant.

C. Required information for booking transaction. After [Codifier's note: 240 days after the effective date of this ordinance] a hosting platform must include the City registration number in all of the hosting platform's publicly available listings prior to performing a booking transaction for each short term rental within the City.

D. Obligation to remove listings. If the hosting platform has reason to believe a short term rental is in violation of any provision of this Code, including but not limited to notice from the City of a violation or an owner's failure to supply to the hosting platform the City registration number for the short term rental, the hosting platform must remove the listing from its hosting platform within ten business days.

5.130.100 Violations.

A. Registration suspension or revocation. The Director may suspend or revoke a short term rental approval and registration number, impose administrative remedies as provided herein, or enforce a suspension or revocation through a civil action when the permittee commits one or more of the following acts or omissions:

1. Failure to comply with any provision of this Chapter or other applicable City regulation;

2. Operating or allowing the operation of the short term rental in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners

3. Cancellation of an applicable health department's public accommodation license, tax authority registration, or any other required permit; or

4. The securing of the permit by fraud or misrepresentation, including but not limited to supplying false or incorrect information on the permit application.

B. Procedure. Should the Director decide to suspend or revoke a permit, the permittee will be given notice and an opportunity to respond following the procedures in this subsection, except that should the director determine the short term rental or its operation present a safety hazard or require immediate remedy, the director may order operation of the short term rental to cease immediately.

1. The owner will be notified in writing by the Director at least seven days prior to the action contemplated and the reasons therefore.

2. Upon receipt of the notice, the owner may request a meeting with the Director. Such request must be in writing and must be received by the Director within seven days of the permittee's receipt of the notice. Failure on the part of the owner to request in writing a meeting and within the specified time period shall be a waiver of the permittee's right to a meeting.

3. If a meeting is requested by the owner, the Director will set a time, date and place and will so notify the permittee, in writing.

4. When a meeting is conducted, the City will present the evidence supporting the contemplated action. The Director may request evidence be presented by other parties. The owner may present evidence. The Director will take all evidence admitted under advisement and once a decision has been made the Director will notify the permittee of the findings and decision in writing.

C. Civil Penalty. Violations of this Chapter are municipal infractions, as defined in 7-1-4150, Montana Code Annotated. The Director may recover the following civil penalties for any violation of this chapter. Each day a violation continues constitutes a separate violation. For any violation by an owner or hosting platform, the Director may recover a civil penalty of not more than $300.00 for a first offense, and not more than $500 for a repeat offense. (Ord. 3732, 2024)